IN THE CIRCUIT COURT OF
THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION

NORMA R. BROIN, et al.,
Plaintiffs,
vs. CASE NO. 91-49738
CA 22

PHILIP MORRIS COMPANIES,
INC., et al.,
Defendants.
_____/

TRIAL
VOLUME 44

TRANSCRIPT OF PROCEEDINGS in the above-styled cause before the Honorable Robert Paul Kaye, at the Dade County Courthouse, 73 West Flagler Street, Miami, Florida, on Monday, July 14, 1997, at 8:40 a.m., in chambers.

APPEARANCES:
STANLEY M. ROSENBLATT, ESQ.
SUSAN ROSENBLATT, ESQ.
On behalf of the Plaintiffs
HUGH R. WHITING, ESQ.
JONES DAY REAVIS & POGUE
On behalf of R.J. Reynolds
EDWARD A. MOSS, ESQ.
ANDERSON MOSS SHEROUSE & PETROS
On behalf of Brown & Williamson

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APPEARANCES (Continued)
MICHAEL RUSS, ESQ.
KING & SPALDING
On behalf of Brown & Williamson
DAVID L. ROSS, ESQ.
GREENBERG TRAURIG, et al.
On behalf of Lorillard
DAVID HARDY, ESQ.
and WALTER COFER, ESQ.
SHOOK HARDY & BACON
On behalf of Lorillard and Philip Morris
KELLY ANNE LUTHER, ESQ.
CLARKE SILVERGLATE WILLIAMS & MONTGOMERY
On behalf of Liggett and Brooke Groups
MARIE V. SANTACROCE, ESQ.
MICHAEL FAYE, ESQ. and
KASOWITZ BENSON TORRES & FRIEDMAN
On behalf of Liggett and Brooke Groups
JOSEPH R. MOODHE, ESQ.
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On behalf of The Council for Tobacco Research
DAVID H. LICHTER, ESQ.
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On behalf of The Council for Tobacco Research
MARTINEZ & GUTIERREZ
JOSE MARTINEZ, Esq.
On behalf of Philip Morris Companies

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I N D E X

Plaintiffs' Opening Statement Page 5462.
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(Thereupon, the following proceedings were had at 8:40 a.m. in the Judge's chambers:)

THE COURT: Let's start with this and we'll fill them in.

I got a letter this morning; that's why I called you up here. It's from one of the jurors. I have not opened it.

MR. MOSS: Juror number?

MR. HARDY: That's the first juror.

MS. ROSENBLATT: Juror No. 1.

MR. HARDY: The first juror.

MR. WHITING: No. 6.

THE COURT: I don't know what's in it, but my nose is twitching again.

MS. ROSENBLATT: Oh, no.

THE COURT: It's a long letter here. All right. She wants to be dismissed. "My reasoning for this request is two-fold. First, I'm a sole financial supporter of my household and would really be adversely affected by such extended time." She has a teenage son, 13. I'm paraphrasing. Needs supervision after school and so forth. Nobody she can trust this to. Also, she has a medical problem made worse by the prolonged sitting and joints become stiff and painful. She is taking Motrin, 600

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milligrams once a day, but would have to increase the dosage. She gives me the doctor's name. "And I am expressing the situation now because we were not made aware of the length of the trial until three days ago.

MS. ROSENBLATT: I don't think so.

THE COURT: Well, I'll tell you the truth. There are two planets out there, and I'm not sure which one she's on, but she certainly wasn't on ours.

MR. MOSS: They are not aligned.

THE COURT: That's under the first excuse. "Secondly, according to the personal policy of my company as stated in the employee handbook, I am only allowed 14 days away from work for the

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purpose of jury duty. Beyond that time, I would not be entitled to any compensation. How will my son and I survive?" She realizes her civic duty, but still says, "I have a financial problem," and she--this is the employee's brochure which is from her office, I guess. "Time off will be granted to employees who are summoned for jury duty. Employees will be paid the difference between their regular pay and the fee received for jury duty where the jury duty falls on scheduled work days. Paid jury

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duty leave will not exceed 14 days. Employees who do not put in a full day of jury duty must report to work when released for the day." I'm not sure where she worked.

MS. ROSENBLATT: I forget.

MR. HARDY: She is saying basically that after 14 work days, she doesn't get paid.

THE COURT: That's what she is saying. Now, the law is somewhat different. The problem basically I don't think is the issue of getting paid or not, because I'm sure that could get worked out, but the real problem we have is now she's got second thoughts and so forth and so on. So I want to let this be brought up and you can discuss it. I think it's going to happen more frequently as we go on. There's got to be an end to it somewhere.

MR. HARDY: She is a Dade employee with an organization of over ten people, so basically what you're saying is---

THE COURT: I'm not sure where she works.

MR. HARDY: I don't have the questionnaire.

THE COURT: Let me go find the questionnaire.

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MR. MOSS: She has a 13-year-old grandson that she told us about.

MR. WHITING: I think it's No. 6, Your Honor.

MS. ROSENBLATT: But I think she said if she was assured that she got paid, there wouldn't be a problem.

THE COURT: You folks have the instant transcripts.

MS. ROSENBLATT: I don't have it here.

MR. MOSS: I remember her raising the 13-year-old grandson.

THE COURT: She works at Jackson Heights Rehab Center, nurse management. I don't know if that's a private or---

MR. MOSS: I don't know either, sir.

MR. HARDY: But that is Dade County; is that correct?

MR. MOSS: It's in Dade County.

THE COURT: It's in Dade County, but I don't think--I don't know if it's a county facility.

MR. MOSS: I don't think it's a county

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facility.
MS. ROSENBLATT: What about her medical problem? What did she say? She was vague about
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that.
MR. HARDY: Joints stiffen.
MR. MOSS: Six hundred milligrams of Motrin.
THE COURT: She takes it once a day. I'm not so sure she indicated whether she was ill. I get the feeling that all of this could have been told to us a lot earlier, and it's not true she only found out about the length of this trial because when I first talked to them, one of the first things I asked them was the trial will take several months.
MR. HARDY: Everybody is different. My mother takes Motrin and she has this problem with her knees and legs and ankles freezing up when she sits for a long time, but the way she takes care of it is by standing up. What you could do is put her in the back row and she can stand up whenever she needs to.
THE COURT: I don't have a problem with that. The question is whether or not she was eventually going to build up into this situation. My feeling right now is not to release her. We can't afford to do that yet because we haven't even gotten into this case.
For those who came in late, Juror No. 6 sent
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in a letter saying she wants to get off jury duty.
MR. MARTINEZ: I'm shocked.
THE COURT: Why not?
MR. ROSENBLATT: I have mixed emotions. She will probably be a problem. I mean---
THE COURT: You know, we're whittling down and when we have a real problem we won't have enough people to sit in.
MS. ROSENBLATT: We'll have six alternates if she was gone.
THE COURT: But if they sit there and see one more leave--we already have one regular leave. If another regular leaves, somebody is going to sit back and say, "Hey, there has to be a way of doing it."
MR. MOSS: Is she here?
THE COURT: I don't know.
MR. MOSS: That's another issue.
MS. ROSENBLATT: Was that hand-delivered this morning?
MR. ROSENBLATT: If she's not here, it makes it easy.
MS. ROSENBLATT: It was hand-delivered. Presumably she is here. We are just worried about an attitude problem, which would contaminate other
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jurors, of complaining.

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THE COURT: Maybe I'll have to talk to her. I guess that's the way to go.
MR. ROSENBLATT: In front of everybody?
MS. ROSENBLATT: Or bring her in here.
MR. HARDY: Yes, if it would be all right with you all to do it in chambers.
MR. ROSENBLATT: Sure.
THE COURT: But she will start giving me the excuses and cry, "My 13-year-old." See, the point is, you don't want anybody sitting around with problems. You want somebody on the jury who is going to concentrate and pay attention to the case. It's bad enough as it is without these problems. You can talk about it among yourselves or whatever you want to do.
MR. ROSENBLATT: I think we are pretty much agreed to bring her up here and talk to her. I don't think anybody is opposed to that.
MS. ROSENBLATT: Our inclination is we don't want anybody on the jury being upset about being on the jury, and that's not remembering much about her or---
THE COURT: She was an old lady. She had bags or packages.

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MS. ROSENBLATT: Yes. Shopping bags or something.
MR. WHITING: Your Honor, let me just say for the record that while I would like to talk with my colleagues or the other defendants about this, I have a very serious concern about the process that has occurred, and contemplation that we could, before opening statements, be thinking about starting a trial under circumstances where not one but two of the jurors that were originally seated at a juror panel pursuant to the procedures here would not be among the jury. I think this process is, certainly in any of my experience, outside the law, and means, in effect, that we are not starting the trial with the jury as constituted pursuant to the procedures and pursuant to the exercise of peremptories, all of which or many of which we still had available at the time that the juror was sworn, and we all, at least for me, exercised those peremptories looking at a panel. Had we known about problems with these jurors, we clearly would have had options available to us with the exercise of peremptories for selection of jurors that might very well have had a jury with a makeup different than what we might now have with alternates taking

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places.
So I have a serious reservation that this is well outside anything that interferes with the right of my client to have the procedures contemplated by the law of Florida for the selection of the jurors, and commencement of trial with a jury as constituted pursuant to procedures, and I wanted to be on the record with respect to that.

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THE COURT: For Liggett folks who just came in--

MS. LUTHER: Yes, Your Honor.

THE COURT: --I got a letter from Juror No. 6 claiming she has financial problems if she stays, and her son, 13-year-old son, she has to take care of, and she also takes Motrin for stiff joints and all that and wants off the jury. We are discussing it.

MS. LUTHER: Your Honor, this is Michael Faye.

MR. FAYE: How are you doing?

THE COURT: Good to see you.

MR. MOSS: Let me follow this up.

MR. HARDY: Before that, let me say something.

THE COURT: I know you want to preserve

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it for appeal and all that, and I really am not concerned about it, and you can all join in on the appeal issue with Reynolds. So that's fine. You're on the record.

MR. HARDY: Let me say something else, though, because I agree with the Rosenblatts that we ought to bring in the lady. I think you have to do that in view of the letter.

My suggestion would be, however, that you, in essence, give her an across-the-goal speech, as you have with some of these earlier people who are trying to get off, that you said you would serve and you need to do your duty and we'll let you stand up in the back of the room to loosen up the joints and so forth, because I'm concerned that what we are going to do is infect this panel with the recognition that they can get off by doing this sort of thing, and that is important. Even if you decide, based on what she says in here, that you're going to let her off, I think it's important to tell her, in essence, give her a tough talk and hope that that takes care of the problem, because I'm very worried that otherwise people are just going to start falling by the wayside.

THE COURT: It's infectious and it runs

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through the whole group once they get the idea. I understand that, but I think the best thing to do is talk to her, get her on the record and find out exactly what she is talking about. So let me get somebody to bring her up.

MR. MOSS: This will take a very short time, but I know Your Honor said that we preserve what we want for the record, and this is not the way I or the other defendants I'm speaking for, which are all but Liggett, intended this case to start, nor do we want to, but based upon what occurred with Juror 68, and based upon I know that when Your Honor granted plaintiff's motion on Friday to excuse her, it was over our objection and Your Honor recognized that, but in doing some further work over the

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weekend and looking into it, it may be that--well, not it may be, but I think defendants are compelled to request a mistrial based upon the recusal of Juror 68 as we don't believe Florida law was followed in the Court discharging her based upon either its own motion or motion of the plaintiff.

THE COURT: I'll deny the request.

MS. LUTHER: Just for the record, Liggett does join in motions made by the other defendants this morning.

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THE COURT: Okay.

MR. MOSS: They are going to bring her up?

THE COURT: Yes. Nothing about this case has been easy.

MR. MOSS: Do you want us to take a recess?

THE COURT: Yes. If you want to go out and talk about it or whatever you want to do.

(Thereupon, a short recess was taken.)

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(Thereupon, Juror No. 6 entered the chambers, and the following proceedings were ordered to be sealed.)

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(Thereupon, Juror No. 6 exited the chambers and the following proceedings were had:)
THE COURT: My bailiff got another note when he went down to pick this one up.
Juror No. 290: "Please excuse from jury duty because of chronic anxiety requiring medication. Any superimposed stress can cause cardiac arhythmia." Signed, one of several doctors: Silverman, Rosen, Mitch, Dallium (phonetic). Williams or Dallium; I'm not sure. I guess it's Dallium.
MR. MARTINEZ: It must be a doctor, then, if you can't read it.
MR. MOSS: Is that really a doctor's note?
MR. ROSENBLATT: My suggestion is we start treating them like prisoners and not human beings. Humanity is not worth it.
THE COURT: Mark, go out there and find 290. I need the questionnaire for 290.
MS. ROSENBLATT: What anxiety?
THE COURT: If she thinks she's going to have cardiac arhythmia---
MS. ROSENBLATT: The lawyers perhaps.

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MR. COFER: There are lots of doctors in the courtroom.
MR. WHITING: Your Honor, I don't have my list with me. Does the Court by any chance know where she---
THE COURT: I don't have it. The court papers are downstairs.
MR. ROSENBLATT: You really gave these jurors every out, every opportunity, the way you questioned them.
MS. ROSENBLATT: I think an infectious process is going to start if we start permitting people off.
THE COURT: They are stuck and the other way is get a doctor's note. Just like the note from the excuse-my-son-Johnny. Just happens to be a major midterm test, but he's sick.
Let's see. She works at Elliott, McIver and Stowe as a secretary. Where is the question where she's ill or suffering from any---
MR. MOSS: How old is she?
MS. ROSENBLATT: The last question, I think.
THE COURT: She was born 1940. Question 93. Question 93, any reason which, bla,

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bla, bla. "Other than my job, no. I question how

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my boss would feel about it." Now, I have to go talk to her. If I start bringing them up one at a time, you know, what is this going to do.

MS. ROSENBLATT: I don't even know if this reaches the threshold of having discussions.

MR. HARDY: An easy answer for the lady is we don't anticipate she is going to have any stress.

THE COURT: I'm looking for anything where it indicates what her physical condition is. Did you ask that question: Do you have any physical disabilities or anything?

MS. ROSENBLATT: Just the last question asked, "Is there any physical reason that you cannot?" And the last question, 93, people revealed if there was a problem. She worked for an insurance company.

MR. MOSS: Is there a "physical" reason?

MS. ROSENBLATT: "Is there any reason?"

THE COURT: "Is there any reason? If not, why not." If she didn't know that this was going to be stressful--I think this is a bunch of garbage and I really would like to talk to the

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doctor, frankly.

MR. MARTINEZ: If you can find out who it was.

THE COURT: I think it's Dallium. It starts with a "D." Coral Gables, too. What does FAAFP mean?

MR. MARTINEZ: Fellow of the Academy of Family Practitioners.

THE COURT: Okay. I'm not inclined to excuse her until I get something more definitive other than the fact---

MR. MOSS: Don't you have to at least tell her or we are just not---

THE COURT: If I start bringing her up--the thing is, I can't do anything in private down there anymore.

MR. MOSS: I don't know what to tell you.

THE COURT: Okay. Let's just start. Bring her in and we'll start. Okay. Look, I did want to, as long as we are here in private, talk about this opening business. Are you really serious about having a whole day?

MR. ROSENBLATT: Remember, Judge, it was the defendants who suggested that and I was---

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THE COURT: Suggested what?

MR. ROSENBLATT: A day each and I was agreeable.

THE COURT: They have all these people.

MR. ROSENBLATT: As I've gone over my notes, I have no idea, but I'll certainly go past lunch; no question. I'll certainly get into the afternoon, and you know, I've told the media how

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much I appreciate the fact that you're not putting stress on us. If I finish at 3:00, I finish at 3:00. I'm not going to stretch it out.

THE COURT: Why are you talking to the media; that's the point. Two words the media needs to know: "No comment." They love it. After you say, "No comment," they can say whatever they want.

MR. ROSENBLATT: You wouldn't be ready to go this afternoon?

MR. HARDY: No. Our understanding was the defendants would go today.

THE COURT: In retrospect, how is he going to talk for a whole day? That really doesn't make any sense, but I'm pretty much a nut, probably a maverick, when it comes to opening statements because most attorneys misuse it and abuse the opening statement. They always get into their own

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thought processes. They get into closing argument concepts of theory and all sorts of strange things which I don't believe belong in opening statement. To me, the rules literally are an opening statement is merely a recitation of what the evidence is expected to be and not your spin on it, and I like to follow that pretty closely: Joe Blow is expected to testify to A, B, C and D. And later at the closing you can always argue to them what it meant. But right now, it's just a flat-out presentation of what the evidence will be. The evidence is going to be X, Y and Z. So, please, follow that closely.

MR. ROSENBLATT: Well, with punitive and fraud in, Judge---

THE COURT: You can talk punitive and fraud. You can say the witness is going to say so-and-so, and that's the witness, if you know that's what the witness is going to say.

MR. ROSENBLATT: Well, the evidence will show.

THE COURT: If you spin a meaning on that by "the evidence will show you folks that," that's a different story. That's putting a spin on what the evidence is. "The evidence in this case

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is," and it makes a difference. And you can save that for closing. I think that's where it belongs. So be careful of that.

MR. ROSENBLATT: I need a couple of days to rewrite my opening.

MS. ROSENBLATT: There are literally hundreds, if not thousands of documents, and there are many statements we are not going to be going through. We didn't want to spend hours going through a lot of documents, but the evidence will show through these documents quite a few things.

THE COURT: All right, but if that's what the evidence will show---

MS. ROSENBLATT: That makes it unusual in this case.

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THE COURT: But the spin on it, save it for closing. We are all professionals and very expertise on spin, okay? And sometimes there's a blurry line between what is and what is not spin.

MS. ROSENBLATT: Here, since so many of the documents discussed policy and spin in the documents, where do you draw the line of what is spin and what is not?

THE COURT: If you're referring to a document, that's fine, but putting your own personal

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spin on it and what it's supposed to mean to the jury is a different story. That's not what an open statement is all about. If you do all that, we might as well quit after opening statement and let the jury go into the jury room and decide it because you don't need evidence. So, I'm trying to tell you very carefully that I think you ought to stick to the rules of what an opening statement is: a mere recitation of what you expect the evidence to be.

MR. ROSENBLATT: But, you see, Judge, you just pointed out something, and I don't know, I'm not suggesting--it may be perfectly within your guidelines, it's just hard to say, but by the earlier comment you made, you try cases in this building, Judge, and I can name 20 judges that the opening statement I have prepared is great. Any objection would be overruled like that. All the judges are different.

THE COURT: I'm trying to tell you in advance.

MR. ROSENBLATT: In advance, but after, you know---

THE COURT: You've tried cases with me. You know how I feel.

MS. ROSENBLATT: Not fraud. Fraud is

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really--misrepresentation and conspiracy and punitive, we have never tried. We tried medical malpractices that are technical.

THE COURT: What is the difference in saying they committed fraud in that the evidence will show by witness so-and-so and that occurred, that occurred? That is not your spin; that's the witness' spin, if the witness is going to say it.

MR. ROSENBLATT: I think I'm basically doing that.

THE COURT: Fine.

MR. ROSENBLATT: Except, I don't have my opening statement structured to say that witness "A" is going to say doop, doop, doop. It's more general. I mean, "The evidence will show witnesses will say," because, you know, that's just not my style to do it mathematically.

THE COURT: It's the witness' testimony, not your own. Okay.

MR. ROSENBLATT: No problem.

MS. ROSENBLATT: But the documents reflect controversy that creates controversy and

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doubt.
THE COURT: If it reflects it, then it reflects it. What I'm trying to show is that I
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don't want your thought processes as to what it is or should be or what the meaning is in an opening statement. That's closing. And then in closing you can say it all you want, but not in opening.
MR. RUSS: Judge, since we are talking about opening and documents, there is the issue of B&W documents that we had the motion pending on.
THE COURT: He was supposed to tell us something about this.
MS. ROSENBLATT: We aren't planning on using any of those. We just have a couple of documents downstairs. The reason we are not planning on using them---
THE COURT: In opening or trial?
MS. ROSENBLATT: In opening. In trial, sure. In opening we are not because in opening we are planning to just say generally what the documents reflect as opposed to going through each one and reading paragraphs or, you know, specifics, where it is not as detailed.
THE COURT: Okay.
MS. ROSENBLATT: There are a couple of--the first page of the Brown & Williamson handbook I think we are planning on using.
MR. RUSS: We didn't object to that.
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MS. ROSENBLATT: I understand that. And there's a couple of advertisements in the '80s, publications about secondhand smoke, myth, two or three of those, and that's it, and The Frank Statement.
MR. RUSS: Excuse me. So our privileged documents will not be used in the openings. So we will reserve objection at the time when they come in. And we don't have to come up and object since you will not use them.
MS. ROSENBLATT: The Court has found they are not privileged, but---
MR. RUSS: We are going to reserve that point, but it's done and it doesn't need to be addressed.
THE COURT: Relevancy and materiality issue, that comes up.
What are you going to do about demonstrative matters on opening?
MS. ROSENBLATT: You had indicated that we would show to opposing counsel, and we have a couple of them. We need to speak with opposing counsel later today. They indicated blow-ups, but not other demonstrative. Our understanding of the rules, whatever we use, they see; whatever they use,
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we see in advance.

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MR. HARDY: I was going to talk to Stan about this before court recesses today in case he's got any objection or problems so they can bring it up with Your Honor. And I think the point I had made was that if you were proposing to use a part of an exhibit or anything else that the other side wanted to see that was supposed to be demonstrative of evidence that was coming in, you can describe it and if they wanted to see it, you can show it to them.

The only point that I would make is that I thought I ought to be able to reserve the right, if I'm making a series of five or six points, to either have a chart that has the title of those points or to write those points up or something of that sort.

THE COURT: If you can write it up, you can do that, if it's a point. Okay. What I usually object to, and I guess that's because I'm a nut and the kinds of cases we usually try, accidents, when the lawyer gets up and draws the intersection and put the cars in and puts the "X" where the accident took place, that's making evidence and I don't want you to create evidence in that regard.

MR. HARDY: Sure.

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THE COURT: If you're going to put a heading and a couple of points underneath it, dates, time or your point, that's your handwriting and what you've done, that's fine. That's not a piece of evidence. I have no problem with that. If you're going to have an excerpt, a blow-up from a document, you have to make sure that document is going to be a piece of evidence, because sometimes they use it and it never gets in evidence. So that's what I'm talking about that you have to be very careful about.

MR. ROSENBLATT: I think you have to remember, as I'm sure you do, that this case, from both our perspectives, is a history lesson. There's a lot of history here.

THE COURT: Fine.

MR. ROSENBLATT: The evidence is going to show it all, but it's not your standard, ordinary---

THE COURT: I understand. If you want to set out on a chalkboard or on a poster board, or whatever it might be, the history of this thing by date and time---

MR. ROSENBLATT: I'm going to do that for the most part.

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THE COURT: Then you can do that. That's no problem. I don't have any problem with that, but I was thinking of these excerpts from any of the documents that may be in dispute.

MR. ROSENBLATT: I'll show them the documents and you can deal with them. I have about six.

MS. ROSENBLATT: But any documents that

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the defendants plan on using, regardless of where they fall and what category, if they are prepared in advance, we would like to see them to see if we have any objection as to what they are going to put up as they are talking.

MR. COFER: One other matter. You entered an order that 48 hours in advance we will know what to disclose, what witnesses we are going to call and what exhibits we are going to use. And I think Mr. Ross confirmed that was to be in writing. That hasn't been done today, but I don't think it's a problem. Stanley and Susan confirmed that Dr. Richmond will be the first witness on Wednesday, and that Dr. Davis will be on Thursday.

The one thing I do think, however, and I would like to get it today, would be a list of the exhibits that Dr. Richmond is going to use or

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testify about so I will have ample notice to prepare for that, and you can just maybe fax them over some time this afternoon after court.

In addition, Your Honor, plaintiffs indicated that the first CEO deposition that he would like to read from is James Morgan, a CEO of Philip Morris. They designated the entire deposition. I've gotten through about half of it and I blocked out those portions that I would object to. I intend to finish my review this evening and I'll fax those objections over to Mrs. Rosenblatt.

I guess the question is, how do you want to handle, assuming that there are some which we don't agree, when should we set aside time so you can rule on those, because we need advance notice so it can be edited by the video operator.

MR. ROSENBLATT: Probably the lunch break on Wednesday. We'll get a feel for how long Richmond is going to take. It's conceivable that he will take all day, although I don't think so.

MR. COFER: Then we can't edit it.

MR. ROSENBLATT: I see what you mean.

MR. COFER: I will either have for you---

THE COURT: Well, the way to edit, as I

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see it, we can play it and edit it with a volume switch.

MR. COFER: I think it would be preferable, and there may be instances that we have to do that from a timing standpoint, but I think it would be preferable that we can have a service edit it.

THE COURT: That's always the best, but time.

MR. COFER: Exactly. That's the reason I raise it now.

THE COURT: When do you anticipate putting this CEO on?

MR. ROSENBLATT: My plan is since I only have one live witness on Wednesday, I don't

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know how long he's going to take, so my backup is the deposition of Morgan.
THE COURT: In other words, you're going to put a live witness on Wednesday. It may take all day.
MR. ROSENBLATT: I wouldn't think so.
THE COURT: Following that is what?
MR. ROSENBLATT: It depends on the cross.
THE COURT: Following that?

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MR. ROSENBLATT: This depo. I have a live witness Thursday morning. Maybe if--you know, obviously, I would like, and as soon as I know, if the witness for Thursday can come and be available Wednesday afternoon, that would be my preference. The depo is backup.
THE COURT: That's fine. Find out what the objections are. No. 1, there may not be that many of them or may not be that critical.
MR. COFER: That's right.
THE COURT: If it's something we can handle in 15 or 20 minutes or half hour, we can always find that time.
MR. COFER: What I'll try---
THE COURT: We can work, say, after 5:00 if we need to.
MR. COFER: What I'm trying to do is, Susan, have the objections for you first thing tomorrow morning, and you can look at them and take it up first thing after lunch.
MR. HARDY: In view of what Mr. Cofer said on the fax on the exhibits this afternoon, that's fine, but we would like to stick to the 48-hour rule hereafter, so that commencing tomorrow morning with respect to any Thursday exhibits, we

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would like to know at commencement of court in the morning so that people who are support people can be working on that while we are in court. That was part of the objectives.
THE COURT: Whenever possible I would like to stick with that, I agree with you, but knowing the history of this case before it even began, things are not working out according to the way we think they should be worked out. There is going to be an emergency situation and now or later with an unavailable witness or something happened with a witness that you planned on who either cancelled out for whatever reason, and that may present a problem. There are going to be emergencies.
MR. HARDY: I understand that, but what I'm really trying to stress is that the exhibit information on a 48-hour basis is as important as the witness.
THE COURT: Advance notice is fine.
MR. COFER: Where it's particularly helpful, for example, with Dr. Richmond, a former

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Surgeon General, so there's a whole broad range of testimony I have to anticipate, but if I know the exhibits, that saves us time, and certainly I can

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prepare more thoroughly.

MR. ROSENBLATT: Every Surgeon General's report from 1974 to date.

MR. COFER: You're saying are all admissible.

MR. HARDY: One other thing on the record. I think we have this understanding. Unless otherwise indicated, objections by one defendant are objections for all throughout the trial; is that right?

THE COURT: Yes. That will save a lot of coming up with each and every individual statement. If you all agree to that--let's put it this way. I'll agree to that situation. If there's one, for example, where Liggett did not agree on one, they say so and that's fine. It will be a lot easier.

MR. WHITING: Your Honor, may I raise one other minor point? It's my understanding as of last week the media room had on the outside a sign that said, "Secondhand City." I think jurors see that.

THE COURT: Jurors?

MR. WHITING: As they go by.

THE COURT: They don't go by there.

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They come up the back staircase.

MR. WHITING: My only concern is if that's there for a juror to see, it is a comment from the court.

MR. MOSS: It's an easy thing to ask them to take it down.

THE COURT: I don't have a problem asking them to take it down.

MR. LUKOFF: I'll take it down.

THE COURT: They are not going to be---

MR. LUKOFF: For your comfort level, I'll take it down.

MR. MARTINEZ: I don't think it's appropriate for the media to comment anyway.

One point I have, back when the jury selection started, the Rosenblatts' said, "We are going to dismiss Dosal." I gave them a stipulation of dismissal. They haven't dismissed them yet and I would like for them to do that. They haven't actually said, "We dismiss Dosal." I think they would have a heck of a time taking us to trial since we didn't participate in jury selection, but could we have them dismiss us and actually say, "We are dismissing them now"?

MS. ROSENBLATT: I thought that had

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already been done. They are dismissed. There's a

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waiver of any cost, fees, both sides, and there was a dismissal.

MR. MARTINEZ: I gave them a written one that hasn't been executed yet. I'm sure we'll do it.

MR. RUSS: Same is true for Florida Tobacco and Candy. They never dismissed them, for the record.

THE COURT: I thought it was.

MR. ROSS: At one point I said, "Are they still in the case?" and Susan said, "No."

MS. ROSENBLATT: Your Honor, with regard to objections, I'm sure counsel knows there would be no speaking objections.

THE COURT: The next thing that I was going to talk to you about is the objection situation. I anticipate lots of objections.

MR. ROSENBLATT: Not during opening.

THE COURT: No, not necessarily.

MR. COFER: Just during yours.

THE COURT: During trial, and if we have to come side bar for every silly objection that is made or for objections that are going to take a lot of time, it's going to be an convenience for the

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jury because if we are going to waste time for the side bar and the jury is peering at you, it makes it difficult for us to do. And I may have to excuse the jury and put them in the jury room and that's shifting back and forth and that's a problem.

Some of the things will take longer. There may, for example, be a Fry hearing that we have to discuss, and that may take a while. So I would like to keep that down to a minimum. I don't know how we can.

MR. ROSENBLATT: Well, I won't object tomorrow to any more than today. If they don't object at all, I won't object at all.

MS. ROSENBLATT: We offered to preserve on both sides the objections so it wouldn't be interrupted, either opening statements, and the defendants didn't agree to do that.

MR. MOSS: That's correct.

THE COURT: Do you want to do uninterrupted?

MR. MOSS: No, sir. Judge, how could we in advance of a case? You've seen this case and you understand what it's about, and assuming that the rule that you enunciated is abided by, we probably won't get any objections. If it's not

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abided by, you will.

MR. HARDY: I would be delighted not to have any objections, but I can't waive that right now.

MR. ROSENBLATT: I said to Mr. Hardy, "This is an offer you can't refuse. You go second."

THE COURT: Well, you can't do it. For appellate purposes, if you don't make it, you waive

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it.
MS. ROSENBLATT: No. We said to preserve it.
THE COURT: You don't even know what the objection is. No.
MR. ROSENBLATT: That allows you to be creative.
MR. MOSS: We won't make an objection if the guidelines are adhered to.
THE COURT: If you do it right, you won't get objections, and if you don't do it right, you'll get objections.
I'm trying to figure out in this case, I think the jury is going to spend more time in the jury room than they are in the courtroom. That's what bothers me.
MR. ROSENBLATT: The breaks today are

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going to be short.
MS. ROSENBLATT: Are you planning on a lunch break or do you prefer going through?
THE COURT: No. You have to have a lunch break. These people need lunch. The court personnel need lunch.
MR. RUSS: As a final housekeeping point, in light of the Court's ruling I guess at the end of the day on Friday that addiction evidence apparently will be admitted, I hope I misheard that, but I thought you---
THE COURT: I'm not so sure I said---
MR. RUSS: That's what I need to understand. If that's going to happen, we need to supplement our exhibit list. I hope it doesn't happen, but I need a clarification.
THE COURT: I'm somewhat confused about that myself, but I don't know what they are doing. I don't know what they intend to do.
MR. RUSS: I need to make it clear. I need to reserve the right to supplement my exhibit list if that stuff comes in.
MR. ROSENBLATT: That's fine.
MR. RUSS: Which I don't believe it should come in. I'm going to preserve my objection

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to it coming in. I was hoping the Court didn't definitely rule on that.
MR. ROSENBLATT: Based on a ruling, I'm talking about addiction a little, certainly. I'm referring to a document because that's part of the overall fraud. That's one of the many lies.
THE COURT: That's part of the fraud aspect of it. We are not going to talk about what, the youth?
MS. ROSENBLATT: Targeting youth in the opening statement.
THE COURT: But addiction is part of the fraud because that's what all the scientific tests are all about.
MR. MOSS: Wait. I hear something in

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what---
MS. ROSENBLATT: I, really, Judge, would prefer not re-argue this now.
MR. MOSS: I understand, but let me finish, Susan, because what Susan just said, Your Honor, when you addressed youth marketing, Mrs. Rosenblatt's response was, "We are not going to talk about it in opening."
Once again, that is not a response that is meaningful to anyone. If youth marketing is not
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going to be an issue in this case, then we don't need to address it in opening and we don't need to supplement an exhibit list with regard to it; however, it would be the worst of all worlds if counsel, as just was suggested, say, "We are not going to talk about it in opening, but we may put it into evidence," and we didn't talk about it ourselves or anticipate it, and that's what that comment I took to mean, if it's out, it's out, and we don't have to mess with it, and Mrs. Rosenblatt is saying, "Well, now is not the time. We don't need to re-argue it." We do, in view of this comment, at least need to have clarification, Your Honor.
MS. ROSENBLATT: What we stated previously, it won't be coming up in opening statement, and before it would come up through any witness or document, and there are documents that are listed that deal with that, it would be brought up to defense counsel. They would have ample opportunity to address it. And that was what we had discussed.
MR. MOSS: We don't understand our position. The fact that they don't bring it up on opening doesn't mean that we don't have a right and
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indeed want to address it in opening statements, because it will be evidence in our case if they are going to put it in. You need both. And that's all I'm asking, Your Honor.
THE COURT: I wasn't sure this was even going to be a facet of the case. Nothing that I had been exposed to at this point had any indication regarding the youth market.
MS. ROSENBLATT: The documents relating to the fraud deal with the advertising deal with the addiction and targeting to children, and it's part--Your Honor may not agree with us. There are many documents listed. There are expert witnesses who have testified that have gotten into that on expert testimony. There is no surprise that this was listed. If they want to supplement with additional exhibits--we are not going to address it. Depending upon Your Honor's ruling, it may not come in at all subsequent in trial.
THE COURT: In that event, you ought to be prepared for that purpose either by supplementing something or get it on the record that you're

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supplementing.
MR. MOSS: Mr. Russ' motion went to both, and I thought Your Honor ruled that youth
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marketing is not coming in.
THE COURT: That's what I thought.
MR. MOSS: That's exactly what I thought you ruled, and now it's different.
MR. COFER: Let me tell you a concrete example where it will present itself, and it's important to have some guidance. In, for example, Mr. Morgan's deposition, since it was discovery, and of course, Mr. Rosenblatt was allowed to ask questions, and these were pertinent to addiction---
MR. ROSENBLATT: You can delete those on Morgan. The fiction is here. We can't anticipate every problem, as Your Honor will see, through witnesses. Youth marketing is not a big part of our case. We are not sure we are even going to go attempt to use it. If we do attempt to use it, we told them we are going to tell them; we are going to discuss it with the Court; we'll get a ruling. This argument that we need to address it in opening statement, it's just not that kind of a case where you can anticipate every little thing. How much more do we have to say? No. 1, we are not mentioning it on opening statement, and No. 2, if we decide to use it, which we probably won't, we'll tell them and it's not going to just come out.
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MR. RUSS: Can we have the same understanding with respect to addiction?
MR. ROSENBLATT: No. Addiction I'm talking about in opening statement. No. The ruling was different.
THE COURT: All right. If you need to supplement to protect yourself, I'll let you late supplement any time that you need it. If you want to start supplementing in the event it comes up, I'm not going to preclude you from bringing in any evidence to counter it if it comes up, even if it's late.
(Thereupon, the hearing in chambers was concluded, and at 9:45 a.m., the following proceedings were held in the courtroom:)
THE BAILIFF: All rise. The Circuit Court of the 11th Judicial Circuit in and for Dade County is now in session. The Honorable Robert Paul Kaye presiding.
THE COURT: Have a seat, folks. Thank you.
Everybody ready to begin?
MR. ROSENBLATT: Yes, Your Honor.
THE COURT: Okay. Let's bring the jury out, please.
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THE BAILIFF: Bringing in the jury.

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Jurors entering the courtroom.
(Thereupon, the Jurors entered the courtroom.)
THE COURT: All right folks. Have a seat. Thank you, folks.
Welcome to our courtroom. Welcome to our case, No. 91-49738 CA22. As we explained to you earlier, this is the case of Norma Broin, et al., and a number of people we have already talked about, as against the various of the tobacco industry, Philip Morris, Reynolds, Lorillard, Brooke, Liggett, Brown & Williamson, Tobacco Institute, Council for Tobacco Research.
We already discussed that, so you who know who the parties are. We have already introduced you to the court personnel. And you have been introduced to each other. We are about to get under way with our trial.
There are certain things that I would like to discuss with you at this point. Number one, we have given you these pads, with some writing material, so that you can take notes. Because of the nature of the case, I think we are going to be in a position where you will want to take notes.
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Let me discuss the notes situation. First thing I want you to do, do your own notetaking, and not to be interested in what your neighbor is writing down. I would not like you to be aware of what your neighbor is writing, what notes they are taking, because it might in fact influence you. I don't want that to happen. That's the danger of taking notes.
On the other hand, the fact that the case is going to take as long as we anticipated will require to you be able to refresh your memory about certain things. So I am going to allow you to take your personal notes. Before we even begin, on the outside of your notepad, in large letters, print your name, and your number. Let's not print the number--I mean, the name. Let's just print the number. Just make a large, whatever your number is, right in the middle of a page so everybody can see. In the middle of the page. Big numbers. Okay.
These notebooks will be picked up during recess and at the end of the day. They will be in the company of the clerk. So when you are finished whatever it is you are doing, flip it over so that the cover sheet covers all of your notes. All right.
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Number one, we have spent several weeks in getting to this stage. You have been part of that process. You have been through the question and answer process, on more than one occasion, in this case. And so I think you know generally what the procedure is, when it comes to trying a lawsuit. It's a question and answer situation. And you have experienced that because we have asked you questions

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and you have answered those questions.
Generally, a trial is run in the same manner, the difference being, from this point on, you folks will not be asked any questions, and you will not be asked to answer any questions. Your job will be to sit and observe and absorb everything that goes on in the courtroom, because at the end of the case, we are going to ask you folks to decide some issues, that are presented for your deliberation. It's going to be very important that you be aware of everything that goes on.
Initially, in this case, a complaint was filed. It was filed by a group of flight attendants who claimed that they received certain injuries as a result of inhaling secondhand tobacco smoke aboard airliners, over a period of years. They claim the product, the cigarette, was manufactured by the

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cigarette and tobacco makers, and their allied fields, and that these products were dangerous, and that they inhaled this smoke from other passengers who were smoking. They themselves were nonsmokers.
They claimed that the airlines--excuse me, the tobacco industry produced these cigarettes, and that, number one, they were a defective product; and number two, that the tobacco industry engaged in false and misrepresentations, in keeping from the public certain matters inherent with the dangers of tobacco smoke, whether firsthand or secondhand. This is the essential element of the case.
We are going to ask you folks to reach certain conclusions based on some of the issues that are presented in this trial. And the difference with this trial and any other trial is this is a class action case, which means that a group of people, we call them class representatives, have brought this suit on behalf of all of the other airline attendants throughout the nation, who may be involved with the same kind of a situation that they are in.
Because of the nature of a class action, certain common issues, inherent to all, have got to be decided first. So the trial will be broken down

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into one or more phases, and stages. And the first issues that we are going to present to you will be issues relating to common issues, that is, matters which are inherent and common to the entire class of flight attendants. We will not be concerned with individual cases of each and every flight attendant, but merely the basic common issues that affect them all. That makes this somewhat different type of case than your ordinary case that we try at this time.
Now in order to do that, we are going to have to have certain evidence presented to you. And the way a trial works, for those of you who have never been in court before, is when the plaintiffs filed their complaint, the other side, known as the

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defendants, filed an answer. In this case, they denied the allegations in the complaint. The allegations in the complaint are, number one, a strict liability count; number two, an implied warranty count; number three, a negligence count; number four, a misrepresentation, fraud and false representation count; and number five, a count of conspiracy. All of these allegations have been denied by the defense.

The plaintiff then has the burden of going

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forward with its case and proving the elements and the allegations, each and every one.

In order to do that, they will have to present evidence. And so the plaintiff will go first. At this stage, you know nothing more about this case than what I have already told you, and what we previously discussed. And so it may be somewhat difficult for you to put it in context, as we proceed over the period of days, or even, weeks. As the evidence comes in from various witnesses, one at a time, unlike anything else we do in life, where we sit around a round table and discuss issues and matters, we all exchange our views at that time. In a trial, it's different. In a trial, because of the formalities of it all, witnesses come in one at a time and sit in this chair, and are sworn. And then give their testimony.

Sometimes the testimony given is out of chronological order because of the necessities of scheduling. Sometimes it's out of logical order, again, because of scheduling problems. And it makes it somewhat difficult for jurors to put everything in context because they don't know what is coming up next and how one testimony dovetails with another.

To avoid that problem, the Court allows the

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attorneys to make what we call an opening statement. In the opening statement, the attorneys will endeavor to explain to you what this case is all about, and what they expect the evidence to show, so that when the evidence does come in, and the witnesses are called in, to sit in this chair, and are questioned, you will be able to have a better understanding of how one person's testimony fits in with another person's testimony.

What the attorneys tell you in this opening statement is not evidence and should be not considered by you as evidence in the case. It's merely a presentation of what they expect it to be, if you will, a table of contents to a book. You read the table of contents, but you have got to read each chapter before you can understand the book. That's what the opening statement is, merely a recitation what they expect the evidence will be. It is not a time for the attorneys to argue their case to you, to express their theories of the case to you or to try to convince you that they are right and the other side is wrong. That's not what

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happens in an opening statement. It's merely to educate you as to what to expect to hear, by way of evidence and testimony. Each side will be given an

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opportunity to do that.

Now, because of the nature of this case, it may take somewhat longer in our procedure for opening statement than we normally would have. And it may be that we will spend a good deal of time, in an opening statement, by each side. And although we have a number of attorneys, on the defense side, not every one of them will get up and give you the opening statement. They may combine their opening statement, where their interests are similar or alike, or they may not. But it will take some considerable time to get all of that done, in any event.

After the opening statement is made, the attorneys for the plaintiff will then present witnesses. They will call them. They will sit in this chair, sworn to tell the truth. And the questioning of those witnesses will begin. In a trial, generally the party who presents the witness may not ask leading questions. They must ask direct questions, and that is, elicit the testimony from the witness.

On cross-examination by the other side, however, leading questions are permitted. And you will see the difference in the interplay of how

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these questions are asked, formed, and presented, from the direct questioning to cross-examination, leading questions. You will see that difference as it goes along.

The plaintiff will bring the witness in, as I said, and start questioning him. During the questioning of that witness, if the plaintiff chooses, they may try to put into evidence an exhibit, a document, a writing, a thing, physical nature, whatever it may be, which will be marked as an exhibit in evidence if it is accepted by the Court. If it is not accepted by the Court, it may merely be marked as an exhibit for identification. And you will see how that works out as we proceed.

You may take into consideration anything marked as an exhibit in evidence, but you are not to consider matters which are marked exhibits for identification. During the course of the questioning of a witness, the other side, if it finds that the question is what they consider to be an inappropriate question, will bring it to the attention of the Court by standing up and saying, "Objection." The rules provide for that. They are not being impolite, when they interrupt the questioner, because they have to. That's what

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lawyers do. They have to bring a matter to the

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attention of the Court and they will say "Objection."

I will either rule directly from the bench, and either sustain the objection or overrule the objection, depending on the situation. Or I may call the lawyers together and we will go over here to the sidebar and have a conference about the objection, which is a legal argument.

We will try to do that outside of your earshot. And the reason for that is because the Court is to be concerned with the matters that pertain to legal argument, and the jury should not be concerned with that argument. So if an objection is raised, please do not speculate on the reasons why the objection was raised.

If I sustain the objection, and that will prevent the witness from answering the question, you will not speculate on what the answer would have been had the witness been allowed to answer the question. I say it again, this is a matter for the Court to decide.

If you inadvertently overhear some of the conversations that lawyers and I have sidebar, I am going to ask you, wherever humanly possible, to

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ignore it and disregard it. The reason for that is that each of you may hear something different, or you may only hear a portion thereof, and not the entire conversation.

And I don't want you to work on either half hearing something or not getting all of the information you are entitled to, or getting information you are not entitled to. So please be advised that anything that you need to know to decide this case will be presented to you in open court so everyone can hear the same thing at the same time.

And I know that you will be interested in what we are saying sidebar. It's just a matter of human curiosity. I am going to ask you please to not pay us any attention while we do have these arguments. It may be from time to time that, because of the nature of the objection or the argument raised, that we will have to spend more time than we had anticipated in that argument. And it may come to pass that we will have to send you back into the jury room, while we take some time to thrash out that matter.

We will do it for two reasons: One, because it's more comfortable for you in the jury room.

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Two, because we really don't want you to overhear, inadvertently or otherwise, anything that we are talking about. And I don't want you to sit there and be uncomfortable while we thrash it out. And it's a lot easier for us if we have the freedom to do it while you are not here. So it may come to pass that we will do that. Please be advised of those things. And there may be some time delays.

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We don't really intend to do it that way, and sometimes we can't prevent it. But I want you to understand it, that it is part of a trial. And laughingly, they make jokes about sometimes jurors spend more time in the jury room than they do in the courtroom, but sometimes it happens in cases of this type. So at least you are advised of it and you are aware of it.

After the plaintiff has asked all the questions of that particular witness, and turns the witness over to the defense for cross-examination, then the defense will have an opportunity to question that witness. And again, the process will continue with the defense making cross-examination questions or leading questions if they choose, and the plaintiff may raise any objection they feel appropriate at that time. And that process will

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repeat itself until that witness is excused.

And the process of calling witnesses, cross-examining witnesses, and putting into evidence matters which should be marked as exhibits in evidence will continue until the plaintiff has rested its case, that is, presented all the witnesses they care to present and all the evidence they care to present. They will then say "The plaintiff rests."

At that point, the defense, if they so choose, can put on a case in their behalf. They will then call witnesses, and the process will repeat itself, only in everse, the defense putting on witnesses and the plaintiff cross-examining those witnesses. Same process, same procedure. That process will continue until the defense has rested.

And once the defense has rested, then both sides will be able to make what we call a closing argument to you. The closing argument is different than the opening statement. The closing argument is a time for the attorneys to try to persuade you, to impress you about what the evidence was, persuade you that their side is more right than the other side. It's that time that they are able to do that.

Again, what the attorneys say in the closing

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argument is not evidence, should not be considered by you as evidence in the case. By that time, you would have heard all the evidence. It came from the testimony of the witnesses, and all of the physical matters that were called exhibits in evidence. The attorneys are free to give you an argument, a persuasive argument, if you will.

After the arguments of counsel, then the Court will give you some instructions on the law. Then, and only then, will we send you back to the jury room to decide this case.

That's going to take a long time before we get to that state. And during the time, from now until then, I know that you are going to reach some conclusions in your mind, or at least try to. It's

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only human that we jump to conclusions. Why? Because we hear something that sounds good. We think it sounds good, it's going to resolve the situation. You reach a conclusion in your mind, and no sooner does that happen that something else will come up, cause you to flip-flop back and forth. I am telling you this in advance because I know it's going to happen. And I am going to ask you, as much as you humanly can, not to engage in that mental process.

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Try to keep an open mind. When we selected you as jurors, we asked you that question: Can you keep an open mind throughout the course of the trial, not reach any conclusions until the very end, when you go into the jury room to decide the case? But I know, human beings will, because we all do, hear something that sounds good, jump to conclusions. We hope that you won't do that and then disregard anything else. So you will see it. It will happen to you, back and forth in your mind.

So I just want to let you know that in advance. And the same thing is going to happen during the recesses. You go into the jury room for recesses. You are not allowed to discuss the case; you are not allowed to talk about it; you are not allowed to assess the testimony you have heard; you are not allowed to discuss any of the processes. And I know you want to. And I know that one of you is probably going to do it. You'll say "What do you think about" such and such "testimony"? "Well, did you hear what I heard?" Or whatever. You are not allowed to do that. You are not supposed to do that. And I am going to rely on each and every one of you to monitor the situation so that if somebody does inadvertently raise the issue, tell them that

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please, stop, you are not allowed to discuss it prematurely; you are not allowed to even talk about it or think about it prematurely. And I am sure that once that happens, they will realize the error and they'll stop. But you are going to have to monitor that situation, each of you. It's just human curiosity, because we like to talk about these things. I know it's going to happen to you.

We will take as many rest breaks and comfort breaks as we need. And I want you folks to be as comfortable as you can. I know the facilities are not the greatest. But at least we have the availability of restrooms in the jury room, and you have at least lean-back chairs, which are better than the hard-backs in some courtrooms; so you have some advantage here.

If you feel that you are uncomfortable, and need to stand up and stretch, do so. Don't sit there and suffer. If you need a break, raise your hand, and let me know. I would rather have you break when you need to rather than sit and suffer. So do that, feel free to do that. If you need to

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walk about--I know one of you needs to move about--do that. Just let us know what your problems are. Don't sit there and aggravate yourself and

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suffer about it.

Now during the course of the events, as I said, objections will be raised, by one or the other side. And I will have to rule on these matters. Nothing that I may say or do during the course of the trial, or in any of the rulings that I make, is in any way an intimation of the way I feel you should decide the case or the case should turn out. I have a job to do. And the job that I have is to decide all the issues of law. The attorney has a job to do. Their job is to present this case to you. Now they have worked for many, many, many months, years, in fact, on this case, all sides. They have done an awful lot of work in preparation. Their job is to present the case to you. Most of their work is done. What needs to be done now is the presentation to you.

The manner in which they do that is really not much of a concern to the Court, as long as they stay within the boundaries of the rules. I can't tell them how to try their case. I can let them know when they overstep the rules. Just like in a football game or a basketball game, if they break the rules, the referee is going to blow the whistle. That's what is going to happen at this point. An

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objection will be raised if they step outside the boundaries. But as long as they stay within the rules, I can't tell them how to try their case.

During these objections, and discussions with the Court, on the issues of law, neither of the lawyers can tell me how to rule. That's my job. I have got to decide the issues of law. They can try to persuade me. But they can't tell me how to do it. That's my job. And your job as jurors is to decide the issues of fact, that you glean from the testimony and the evidence.

Just as the lawyers can't tell me how to rule, and I can't tell them how to try the case, neither the lawyers nor I can tell you folks how to decide the facts. That's strictly up to you. And that's why your presence here is so important to us. The lawyers will present the case, I will rule on the law; but you folks will judge the facts, so you in effect are judges of the facts. Each of our function is separate, but it is overlapping. One can't work without the other. And each of us are just as important to the outcome of this case as the others. And that's why we take all this time to talk to you. That's why we took all this time to select you. This is why we hope that you will pay

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attention throughout the entire course of events, so

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that at the end of the case, when we ask you to decide certain issues, you will do so with the full knowledge of what this case is all about, based on the evidence and the testimony, based upon the law that the Court gives you, and argument of counsel, so that the end result will be something that you can be proud of as jurors. Because you were able to hear the facts, hear the evidence, and put it in context and come up with a decision, an intelligent decision, based on fact. That's what we ask you to do.

If the lawyers do their job, and I do my job, and you do your job, the end result of the case will be justice. That's all we can ask you to do.

So I thank you very much. I will ask the attorneys now to make their opening statement.

MR. ROSENBLATT: Thank you, Your Honor.

Good morning, ladies and gentlemen. This day has been a long day in coming. We filed this lawsuit way back in 1991. A lot of things have happened between then and now. You people were all called together on June 2. It's now July 14. One thing we will all agree upon is our gratitude to you for being here, for having the patience to wade

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through this process. And you are here and you have a very important function and role.

In case you have forgotten who I am, I am Stanley Rosenblatt, and along with my wife, Susan Rosenblatt, we represent the national class of flight attendants. And the lead plaintiff is Norma Broin, in the blue, and Patty Young. They are the lead plaintiffs, representing this class of national flight attendants, from across the country. Both of them have been--although they are very young and attractive looking, both of them have been flight attendants for about twenty-five years each.

Now, tobacco, cigarettes, a controversial subject. People have opinions. But the truth of the matter is, most people's opinions are based upon bits and pieces of information. A lot of unconnected sound bites, because there is really no reason for anyone to have focused in on many of the issues involved in tobacco.

You are in a unique position, because you are going to get the story, you are going to get the history, you are going to get the full account.

When I get started, although a lot of things happened before 1954, I am going to basically start in 1954, and develop with you some of the history

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which has transpired from 1954 right up until the present time.

Now as His Honor, Judge Kaye, indicated to you, one of the generic issues you will be called upon to decide in this case is: Does secondhand smoke cause disease? Does it cause lung cancer? Does it cause respiratory problems? Does it cause heart disease?

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You will be asked to evaluate and assess what we say the evidence will show about the fraud, the lies, the misrepresentations, the conspiracy, the concealment of the tobacco industry over the years. And when you hear the full story and the full history, you will realize that the so-called science, as to whether secondhand smoke causes lung cancer and other diseases, and the issues relating to fraud and conspiracy and lies, are all intertwined. They are all intermingled. And you are going to get the full picture.

You cannot understand the strategy and tactics of the tobacco industry with respect to secondhand smoke unless you understand their strategy and tactics with respect to active smoking. And that's why, although this is a case about secondhand smoke, because all of our flight

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attendants made a choice, we hear so much about choice, all of our flight attendants made a choice not to smoke. They had no choice with respect to breathing; they had to breathe. But in order to understand the issues in this case, involving nonsmokers, you have got to understand and get the history of smoking.

Now, for a few basics. The evidence will show that all the diseases caused by active smoking are caused by secondhand smoke as well. That's a basic contention of the plaintiffs in this case. Lung cancer, heart disease, emphysema, respiratory problems, caused by smoking, also caused by exposure to secondhand smoke.

There are, amazingly enough, some four thousand compounds, chemical constituents, in tobacco smoke. Breathe that in, inhale it, puff it out; there are four thousand compounds and chemical constituents in tobacco smoke, and many of them are carcinogens. You are going to hear a lot of, a whole new vocabulary in this case. You are going to hear a lot about carcinogens. A carcinogen is an agent in the environment which can cause cancer in human beings. So when doctors and professors and M.D.'s and Ph.D.'s talk about something that is

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carcinogenic, that's what they mean, something that will cause cancer.

Now with respect to secondhand smoke, there are two broad categories. The smoker takes in the smoke, it goes into the lungs, exhales it. That's one form of secondhand smoke. And that is called mainstream smoke. The smoke that comes out of the smoker's mouth or nose, and can be inhaled by anyone around them.

The sidestream smoke is when the smoker is sitting there with a cigarette, talking, but not smoking. There is smoke emanating from the cigarette, and that's what we mean by sidestream smoke.

And essentially, the same compounds and the

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same carcinogens that the smoker takes in by choosing to inhale a cigarette, the same compounds and carcinogens are taken in by involuntary smokers.

The evidence in this case will show that over the years, the tobacco industry had a fundamental strategy. And that fundamental strategy was, to keep alive a controversy which we believe the evidence will show was a non-existent controversy. Because generally, science and medicine, the medical community, the scientific

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community, agree, cigarette smoking causes cancer and other diseases. Secondhand smoke causes cancer and other diseases. But the tobacco industry's overall global strategy and tactic was to plant doubt in the minds of the American people. Well, does it really cause cancer and other diseases?

Whenever--the evidence is going to show that whenever a Surgeon General's Report came out, and these are yearly reports, and this is not something the Surgeon General of the United States does on his own, it is required by Congress, Congress directs, mandates the Surgeon General: We want to hear from you every year about things which impact the public health of the American people.

So when one of these thick, several hundred page Surgeon General's Reports comes out, it goes to Congress, and it goes to the White House, because that's what the law says.

Whenever a Surgeon General's Report came out, the evidence will show that the strategy of the tobacco industry was to knock it, to nit-pick with it, to find fault, to find flaws, to criticize. And they were brilliant at that. They were expert at that.

Whenever there was prestigious research

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performed at a medical school, whenever an article appeared in a prestigious medical journal, and there have been thousands of articles, saying that cigarette smoking causes cancer and other diseases, secondhand smoke causes lung cancer and other diseases, the strategy was knock, attack, belittle, criticize, plant doubt in the minds of the American people.

Now, since 1984, four warnings were mandated by Congress. Congress said, to the tobacco companies: We are requiring you to put on the packages of your cigarettes four different warnings. "Quitting smoking now greatly reduces serious risks to your health." That's one of the warnings.

The most explicit warning says, "Surgeon General's Warning: Smoking causes lung cancer, heart disease, emphysema, and may complicate pregnancy." It doesn't say "Smoking may cause lung cancer, heart disease, and emphysema." It doesn't say "could be." It doesn't say "maybe." It says flatly, without equivocation, "Smoking causes lung cancer, heart disease, and emphysema."

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I took the depositions of the chief executive officers, the presidents, of Philip Morris, R.J. Reynolds, Lorillard and Brown &

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Williamson, just a couple months ago, April of this year. And I said to them, and they were under oath, "Is that true? Does smoking cause lung cancer, heart disease and emphysema?" And they all, in effect, said "No." Or "We don't know." Or "It hasn't been scientifically proven," showing that the strategy which began years and years ago, about planting doubt, still remains a fundamental strategy.

Now the evidence will show something else, and I want to be perfectly clear about this. Does cigarette smoking cause lung cancer, heart disease and emphysema to everyone who smokes? 100 percent of the people? The answer to that is obviously no.

I concede to you, and the evidence will show, that there are some very lucky people. And the reasons are not even fully understood by medical science, other than it has to do with genetics and molecules, and it gets very complicated, and you will hear all that testimony.

There are some people who can smoke thirty years, two packs a day, and never get lung cancer, because they have some defense mechanism within their body, some protection, not fully understood by medical science. But that in no way changes the

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fundamental truth of the warning that smoking does in fact cause lung cancer, heart disease and emphysema, in many smokers.

And the evidence will show that they have been so brilliant, and so skillful, in their---

MR. HARDY: Objection, I think that is argumentative.

THE COURT: Sustain the objection. Personal comment.

MR. ROSENBLATT: The evidence will show that they have convinced the American smoker to in effect play Russian roulette, that he is going to be or she is going to be one of those lucky people who won't get lung cancer or heart disease. And their strategy, their marketing, their psychology, their lobbying, they touch every base, that's going to be in the evidence in this case, as to how they have pulled this off over many, many years.

Dangerous products must be used carefully. The evidence will show if you use cigarettes carefully, and in the manner in which they are intended to be used, they can kill you.

Now, I want to begin at the beginning. As I say, it's not really the beginning, but it's, I think, a very good starting off point. Can all of

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you see this? It will be in evidence, and I am

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going to, I am going to read, I am going to read parts of it.

This is called a Frank Statement to Cigarette Smokers. Now, what is the background of this? And you can see, basically at the bottom, all the tobacco companies signed on to this.

Thanks a lot.

MR. FAYE: Your Honor, objection.

MR. ROSENBLATT: Except Liggett. Liggett didn't sign on to it. They signed on to some other things but not on to that.

Now, what is the background of this? In December 1953, an article appeared in a technical journal, a scientific journal, which was called Cancer. That was the name of the journal. In this journal, in December 1953, there was a report about an experiment on mice conducted at Sloane Kettering, the very famous cancer hospital in New York City, where the experiment was to take cigarette smoke, the tars, from cigarette smoke, and paint them on the back of mice. And many of these mice developed malignant tumors.

And it got a lot of attention. It got a lot of publicity in the popular press. And the tobacco

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executives, the evidence will show, they got a little rattled. And they called a big meeting, in January of 1954, at the Plaza Hotel, in New York City. And they all got together, and they viewed this, the evidence will show, they didn't view this as a health problem. Does it cause cancer? Hey, what does this mean, with the mice? It was a public relations problem. It was a marketing problem, that they had to deal with. And this is what they came up with. A Frank Statement to Cigarette Smokers.

And shortly after the meeting--they acted on this fast--in January of 1954, in just about every newspaper in America, I think it's about 460 newspapers, this was a full page ad. This was a full page ad, where, the evidence will show, that the tobacco industry laid the foundation of deceit and deception and lies, that they would tell to the American people, continuously, for the next four decades.

Now, the tar on mice, tar is a catch-all term that refers to the solid compounds produced when tobacco burns. Ladies and gentlemen, this is forty-three years ago. And I am going to go over some of the specific statements in a Frank Statement to Cigarette Smokers, and amazingly enough, the

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evidence will show, not a lot has changed in this fundamental strategy. And I am not going to--this is one of very few charts that I am going to use in my opening statement. I am sure tomorrow, when the defendants make their opening statement, you will get all kinds of color-coded, beautiful charts, but I am not going to have many. But this is a seminal, fundamental document, to enable anyone to understand

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the history of tobacco in the United States of America.

Where I have got this pointer, "Recent reports on experiments with mice have given wide publicity to a theory that cigarette smoking is in some way linked with lung cancer in human beings." They refer to that as a theory in 1954, and according to the CEO's whose depositions I took in April of 1997, 43 years later, it's still basically a theory.

And what do they tell the American people? "Distinguished authorities point out that medical research of recent years indicates many possible causes of lung cancer. That there is no agreement among the authorities regarding what the cause is. That there is no proof that cigarette smoking is one of the causes." And No. 4, "That statistics

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purporting to link cigarette smoking with the disease could apply with equal force to any one of many other aspects of modern life. Indeed the validity of the statistics, themselves, is questioned by numerous scientists."

No. 4, in particular, relates to the strategy of secondhand smoke. The tobacco industry is still attacking statistics. They are still attacking epidemiology, which is a study of populations where doctors and epidemiologists attempt to reach broad conclusions. And the evidence will show that they are making essentially the same arguments with respect to secondhand smoke as they made with respect to active smoke some forty-three years ago.

Now science knows that lung cancer is the tobacco disease. Basically, before the modern marketing of cigarettes, lung cancer, the experts will tell you, was essentially an unknown disease. Hardly anyone ever got lung cancer. Lung cancer is not part of the normal aging process. I am not telling you that cigarettes and secondhand smoke are the only things in the world that cause lung cancer. If someone is a uranium miner, or they have worked all their life in asbestos, that can be a cause of

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lung cancer. But generally speaking, lung cancer tragically is the cigarette disease.

And the mantra of the tobacco companies is: Well, it may be a risk factor. Or there may be a statistical association. But cause has not been proven.

Cause is the big denial to them, that cigarette smoking, secondhand smoke, may be a factor. There may be an association. There may be a relationship. But no, it hasn't been scientifically proven that cigarette smoking or exposure to secondhand smoke causes disease.

Now I am going to point to two of the biggest lies on this full page ad. And I am not going to mince words with you. That's our position,

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and we believe the evidence and the documents in this case will show, these were deliberate lies, part of an overall strategy, to get people to continue smoking and not worry about the clear adverse health consequences of smoking.

This they put in boldface, where my thumb is. "We accept an interest in people's health as a basic responsibility paramount to every other consideration in our business." The evidence will show that what was paramount to every other

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consideration in their business was profits, not the health of the American people.

And this last one here, where my thumb is, the tobacco companies say to the American people, "We always have and always will cooperate closely with those whose task it is to safeguard the public health."

Well, we will bring before you--we hope to bring before you, because both Surgeon Generals are a little up in years, former Surgeon Generals, who will tell you that when they were the Surgeon General of the United States of America, not only did the tobacco industry not cooperate with them, with respect to safeguarding the health of the American public; they basically always did everything they could to undermine, to undermine the true science and the true medicine.

One of those Surgeon Generals is Julius Richmond, who was Surgeon General during the Jimmy Carter Administration, in the late '70s. Another former Surgeon General of the United States, who we hope to have testify, is Jesse Steinfeld, who was Surgeon General during the early 1970's, during President Nixon's Administration.

We will also have other officials from the

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public health community who have had a role in being involved with Surgeon General's Reports, and other official documents, who will say that "The opposite occurred. The opposite occurred. They never cooperated with us. They always sought to undermine what we were trying to tell the American people about steps that they should take to protect their health, and improve their health.

And what is, what is the bottom line of a Frank Statement to Cigarette Smokers? Okay, they go through all this, go through all this. And they are intelligent, sophisticated people, so obviously they have to tell the American people, "We are telling them all this, telling them not to worry about the mice experiments. What are we going to do? What is the tobacco industry going to do?

"Well, Mr. and Mrs. America, we are going to set up the Tobacco Industry Research Committee. And we are going to pour millions, millions of dollars, and we are going to try to get to the truth of, does cigarette smoking cause lung cancer?"

Well, the evidence is going to show,

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forty-three years later, 1997, the position of the tobacco industry is: We still got to do more research. Don't know the answer. We don't really

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know the answer as to whether cigarette smoking causes lung cancer and other diseases. Got to do more research.

Now, you will hear, over and over again in this case, that the tobacco industry will say, "Well, what do you mean, the tobacco industry? Are you talking about Philip Morris? Or are you talking about R.J. Reynolds? You know, be specific."

Well, what did they call themselves here? The Tobacco Industry Research Committee. That's what was going to be established. They recognized that of course there is a tobacco industry, and that's why, with the exception of Liggett, all the companies signed on to this document. But then, for public relations reasons, they changed the name of the Tobacco Industry Research Committee to the Council for Tobacco Research. Just a different name. Essentially the same purpose. A purpose of diversion, a purpose of pretending to do legitimate, meaningful research, when in reality, their whole thrust was to obscure and hide all the research, and there are industry documents which back this up, that their real strategy was to hide and divert and express any evidence, any research which said yes, cigarette smoking causes lung cancer and other

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diseases.

The evidence will show that the Tobacco Industry Research Committee, which became the Council for Tobacco Research, was essentially a public relations fraud. And that it was part of the global overall strategy to keep a non-existent controversy alive, so that people would continue to smoke, and later on, so that nonsmokers would feel, hey, the smoke may be irritating to my eyes, it may smell up my clothes, but it's not going to make me sick. It's not going to make me sick. That was the purpose.

And the evidence will show that they did not research the fundamental question, does cigarette smoking cause lung cancer and heart disease? And forty-three years later, you ask the bottom line, and we have taken the deposition of people from the Council for Tobacco Research, and The Tobacco Institute, and their research has taken them to the point that they say, cancer is a complicated disease. Well, medical science knew that back in the early '50s. Of course cancer is a complicated disease. But the man or woman suffering from lung cancer may find that interesting, but what people want to know is what should I stay away from, so

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that I don't develop cancer? That's the practical

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question they promised to research, but didn't.
And then they will say things, "Well, we have found out, through the money spent, through the Council for Tobacco Research, that genetics and family history play a role in why some people get cancer, and others do not." Again, medical science has always known that. That because of genetics, because of certain lucky individuals' defense mechanisms, they may smoke, they may be exposed to secondhand smoke, they won't get sick, which in no way diminishes the impact of the people who actually do get sick. And that's precisely why one flight attendant may develop lung cancer in fifteen years, and another flight attendant, nonsmoking, may develop it in six or seven years. Everyone is different. There is no question about that. Individual susceptibility, we acknowledge.
Forty-three years later, their answer to the question, which they pretended they were going to answer in a Frank Statement to Cigarette smokers--Does cigarette smoking cause lung cancer?--their answer is: I don't know. Maybe it does. It's a risk factor like cottage cheese and cheesecake, and fatty diet. It's a risk factor, but

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does it cause? We don't know. What we need is more research.
That's the song they were singing forty-three years ago. That's the song the tobacco industry is singing today. And the evidence will show it is a phony song.
There is no more research needed on the fundamental question of whether cigarette smoking and secondhand smoke cause disease. And the evidence will show that the Frank Statement, not as such, but the general outline, the guts of the Frank Statement, has been repeated hundreds and hundreds and hundreds of times, by the propaganda arm of the tobacco industry, The Tobacco Institute, by individual companies, over the last forty-three years. Repeat, repeat, repeat. The same basic themes.
Take a break?
THE COURT: I don't see any reason to.
MR. ROSENBLATT: Now, if anyone needs a break or anything, don't hesitate to raise your hand or make it known. We are not in prison here.
JUROR 156: Could I have that closed?
(Thereupon, a discussion was held off the record.)

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MR. ROSENBLATT: Let's talk about secondhand smoke. When did doctors start thinking about: Hey, you know, okay, we all know, we all know, everybody in the world knows, except for the tobacco industry, that obviously cigarette smoking causes lung cancer. Are---
MR. WHITING: Objection. Your Honor. This is argumentative.

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THE COURT: Sustain the objection.
MR. ROSENBLATT: When did people in the medical and scientific communities start thinking that secondhand smoke posed a health danger? And the evidence is going to show that these early pioneers, you are going to conclude, I feel very confident, they deserve a lot of credit. Very easy to jump on a band wagon. But here is Jesse Steinfeld, who was Surgeon General of the United States, in the early '70s--that's almost thirty years ago--was worried about secondhand smoke. And it was not a popular thing to be worried about.

And the evidence will show that the tobacco companies then, and in the intervening years, have used all their powers to attack and shoot down any concerns that the medical community had about secondhand smoke, because the idea, the idea of

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banning smoking in public facilities, was anathema. It was a curse to the tobacco industry, and something they fought very, very hard against.

Dr. Steinfeld, in 1971, directed a review of secondhand smoke be prepared for the next Surgeon General's Report, which would have come out in 1972. And we have another witness, who I will tell you a little more about later, Dr. John Holbrook, a specialist in internal medicine, and pulmonary medicine, who was the senior scientific editor of the 1972 Surgeon General's Report, and because of the actions of men like Steinfeld and Holbrook, secondhand smoke was actually discussed in the 1972 Surgeon General's Report.

Now I am going to show you a document, which has been produced by Brown & Williamson, which goes through somewhat of a chronology and history.

Now all I am really doing now, initially, is just so that you will have an idea what this page looks like, so that you will be able to identify it and know that you have seen it before.

Public Smoking, the top paragraph. "In 1971, Jesse L. Steinfeld, M.D., then U.S. Surgeon General, advocated the prohibition of smoking in confined public places, such as restaurants,

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theaters, airplanes, trains and busses, because the nonsmoker might be injured by ambient tobacco smoke, that is, tobacco smoke in the atmosphere."

And we are going to have expert witnesses tell you that had these recommendations been followed in the early '70s, or even the late '70s, or the early '80s, and had it been banned from airplanes and other places, many, many lives would have been saved, by an earlier ban.

Now, in this chronology of Brown & Williamson Tobacco Company, let's go from 1971 to 1973, where obviously city governments, county governments, state governments, private people who owned buildings, are starting to look into the subject and saying to themselves: Should we ban

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smoking in our buildings? Is secondhand smoke a health problem?

In 1973, thirty-six bills proposed in eighteen states, five were enacted. Many municipalities---

MR. MOSS: Your Honor, may we approach the bench.

THE COURT: Yes, sir.

(Thereupon, counsel and the court reporter approached the bench, and the following discussion

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was held outside the hearing of the Jury:)

MR. MOSS: The reason for my objection, I wanted to call a sidebar, is what we are getting into is what Your Honor clearly ruled on Friday, and getting into areas of lobbying. It's exactly the area where he is going, exactly what we talked about.

THE COURT: Yes, sir.

MR. ROSENBLATT: Well, the word "lobbying" has not come out of my mouth. I mean, obviously I have to make the point that part of their overall strategy was to fight bans. I am not going to talk about lobbying, and using that word. I am not going to talk about money, to political candidates and that kind of thing. But this is part of the picture.

MR. MOSS: This is what we argued before, whether he uses the term "lobbying" or not is obviously not determinative. We are not here to try to get in a back door. That's what we are doing. The fact that they would oppose bans was an exercise of their constitutional prerogative, is what we argued long and hard, and Your Honor ruled.

THE COURT: It is one thing to oppose a ban, but to go to Congress to oppose, a particular

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governmental agency or legislative body, to oppose it would be the lobbying we are talking about.

MR. MOSS: He is not talking about that. He is talking about opposition to governmental authorities. That's the area.

THE COURT: If you are going to get into governmental agencies, that would be correct. If you talk about to the general public, you wouldn't be. So---

MR. COFER: Your Honor, the record would reflect that he did expressly use the word "lobbying" about five minutes before this.

THE COURT: Okay. I sustain the objection.

MR. MOODHE: I have a further concern, which is that Mr. Rosenblatt had indicated on the record that he was not going to mention in opening statement any comments to the effect of what impact on governmental regulations or rules would have come from any information that might have been withheld or otherwise not delivered to governmental agencies.

He just went into that. And I want it to be

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clear that we have an objection to that, and that that should not be given, the representations that were made to us about the limitations he was

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going to abide by during opening statements, or not to be telling the jury that at this point. Your Honor specifically reserved ruling on that.

THE COURT: I don't know how deeply you want to get into it, but let's stay away from the concept of lobbying before legislative or congressional bodies.

MR. ROSENBLATT: The reason I said something about a break, remember that one woman who said that---

THE COURT: If she wants to raise her hand, she'll raise her hand.

MR. ROSENBLATT: Fine.

(Thereupon, the following proceedings were held within the hearing of the jury.)

MR. ROSENBLATT: Ladies and gentlemen, I think I was in the middle of reading, 1973, from this document. Let me start at the beginning again. It's relatively brief.

"Thirty-six bills proposed in eighteen states, five were enacted. Many municipalities enacted restrictive ordinances. The Arizona restrictive law and its promoter, Mrs. Carnes, received wide publicity."

Now this sentence is very significant as it

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relates to airlines. "In 1973, the C.A.B. ordered commercial airliners to separate smokers and nonsmokers."

The C.A.B. is the Civil Aeronautics Board, which has jurisdiction over the airline industry, just as the F.A.A., Federal Aviation Agency, many agencies have some supervisory control over the airline industry. But this specifically relates to our issue: "The Civil Aeronautics Board, in 1973, ordered commercial airliners to separate smokers and nonsmokers."

Our experts are going to tell you, both MD's, specialists in pulmonology, as well as chemists, who are in a position to study the exposure of secondhand smoke in airline cabins, will tell you that to a large extent, the separation of smokers from nonsmokers is a myth, because during the days when that was in effect, the smoke would go from the smoking section into the nonsmoking section only. Obviously not as concentrated. But it was there. There was no way to escape the smoke, simply by being in the nonsmoking section, and certainly the flight attendants had to be all over the airplane.

Now, just continuing this chronology, "In

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1975, 160 restrictive smoking bills introduced in 48

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states, 17 were enacted. The Minnesota Clean Indoor Air Act restricted smoking in a broad range of public and commercial areas. The New York Health Department prohibited smoking in public areas, including supermarkets."

Now why do I show this to you? To demonstrate that in the early '70s, the middle '70s, there were plenty of people who recognized that secondhand smoke was dangerous to the health of their employees.

MR. WHITING: Objection, Your Honor.

THE COURT: Yes, I would like to really limit to what the testimony and evidence will show.

MR. ROSENBLATT: The evidence is going to show that. The evidence will show that.

THE COURT: Through---

MR. ROSENBLATT: Through a variety of people will show why, in the early '70s, and the middle '70s, this kind of restrictive legislation was being considered, because the public health community, and we will have testimony from public health officials---

MR. WHITING: Objection, Your Honor. This is argument.

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THE COURT: Well---

MR. ROSENBLATT: They are going to get their turn tomorrow.

THE COURT: That's not the point. The point is that I wanted to keep this to an opening statement, not a closing argument.

MR. ROSENBLATT: Just because I raised my voice, Your Honor---

THE COURT: Raising your voice was not the issue.

MR. ROSENBLATT: The evidence in this case will clearly show that the public health community, doctors, scientists, M.D.'s, Ph.D.'s, many of them recognized and were concerned about the dangerous effects of secondhand smoke, and that is the background and the foundation behind why, what I just showed you, so many municipalities and other agencies were considering banning smoke.

Now, the evidence is going to show something very, very interesting, about power, about the power of the tobacco industry in the United States of America.

They took Jesse Steinfeld's deposition in San Diego, California. As I said, Dr. Steinfeld was Surgeon General of the United States during the

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early '70s. And Dr. Steinfeld has and will testify---

MR. WHITING: Objection, Your Honor, May we approach the bench?

THE COURT: Well, he hasn't got into the area yet.

MR. WHITING: I believe, Your Honor, that I know the area he is going into.

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THE COURT: All right. Let talk about it. Okay.

(Thereupon, counsel and the court reporter approached the bench, and the following discussion was held outside the hearing of the Jury:)

MR. WHITING: Your Honor, I think what Mr. Rosenblatt is about to say, and if I am wrong, I think he is about to say that Dr. Steinfeld is going to testify that somehow the tobacco company, including my client, caused him to be fired. This is highly prejudicial, and is total hearsay and not admissible evidence. He has no personal knowledge of anything. And there is nothing in the deposition to suggest that he does.

It's highly prejudicial and if he says it, there is no way I can deal with it. The person he is talking about is dead, who he alleges wrote the

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letter. I can't respond to it. It's highly prejudicial and should not be permitted.

MR. ROSS: He doesn't have the letter. No one has the letter.

MR. WHITING: Nobody has the letter.

THE COURT: The letter does not exist?

MR. ROSS: That's right. I took his deposition. He doesn't have it. He has never seen it.

MR. ROSENBLATT: Steinfeld said he saw the letter. And attended a meeting with the Secretary of Health, Education and Welfare, at that time, Richardson, and it was made clear to him, and my recollection is he saw it.

True, we don't have the letter. But he saw the letter, and the letter, the letter said--it was a letter from the president of R.J. Reynolds to President Nixon, which said--this was after his landslide over McGovern--"Congratulations, you know, on your great electoral victory. You remember we made this heavy contribution. You were going to get rid of Steinfeld. How come that hadn't happened yet?" And Steinfeld said that absolute---

MR. WHITING: He does not testify to that. The chronology of the letter is not

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consistent with that. This is highly prejudicial and total hearsay.

MR. MOSS: Secondly, it's gross speculation, because even if that all occurred, he is speculating "That's the reason I got fired."

THE COURT: You can't speculate on why he got fired.

In court, speculation is not admissible.

MR. COFER: If he wants to bring it in, he should bring it in from the testimony, when he appears on the stand, and can be cross-examined, and make sure Counsel lays a predicate.

THE COURT: The letter is written to Steinfeld?

MR. ROSENBLATT: The letter was written

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to Nixon. And showed that Steinfeld---
MR. ROSS: And it does not exist.
MR. WHITING: It does not exist.
MR. ROSS: There is no way we can prove the validity.
THE COURT: Overrule the objection.
(Thereupon, the following proceedings were held in the presence of the jury:)
MR. ROSENBLATT: When Jesse Steinfeld's deposition was taken--and he will testify in this

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case that basically he lost his job, as Surgeon General of the United States, because of the power and influence of the tobacco company.
He saw a letter, which went from the president of R.J. Reynolds Tobacco Company to President Nixon, after Nixon's landslide victory over McGovern--and if my history is correct, that would have been in 1972--which said, in effect, "Congratulations on your tremendous electoral victory over McGovern." The letter reminds President Nixon that "We made this heavy contribution to your political campaign against McGovern. You know that we are very unhappy with Steinfeld. How come he is still on the job?"
And Dr. Steinfeld will testify that that led to him being pressured to resign his position as Surgeon General of the United States.
And that is one of many instances of the power and influence of the tobacco industry in this country, a misused power and influence over a physician who was simply trying to do his job in the interest of the American public.
Now, bringing up the chronology on secondhand smoke, in 1982, in a Surgeon General's Report, this statement appeared: That

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epidemiological studies on secondhand smoke and lung cancer raised the concern that secondhand smoke may pose a carcinogenic risk.
MR. MOSS: Your Honor, we have had hearings on this on Friday you gave clear instructions about quoting from a Surgeon General's Report, and that is exactly what is being done.
MR. ROSENBLATT: Absolutely not.
MR. MOSS: Excuse me for a minute.
THE COURT: All right. I guess we will have to talk about it again.
(Thereupon, counsel and the court reporter approached the bench, and the following discussion was held outside the hearing of the Jury:)
THE COURT: Wait a minute. What was the--where are you going with this?
MR. ROSENBLATT: That's it. Just this one statement, that the 1982 Surgeon General's Report showed that they were concerned about the carcinogenic risk of secondhand smoke. That's it.
MR. MOSS: If I may, Your Honor, the reason I objected is we had a set of hearings, I

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think it was last Friday, may have been Thursday, whatever, where Your Honor ruled. We had a long argument, Mr. Ross argued it, that you cannot read

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from or quote from the Surgeon General Report.

And we talked about witnesses coming in, and basing their opinion on it, and he said "Yes, they can, but as far as quoting from it," here we go, after all of that, and Your Honor clearly telling us, on Friday, this is exactly what you can't do, and don't read from the Surgeon General Reports, Mr. Rosenblatt says "Let me quote from it."

Of course I have to get up. If he would follow when Your Honor ruled---

THE COURT: I don't think he quoted from it.

MR. MOSS: Yes, he did.

MR. ROSENBLATT: I don't have quotes in my notes.

MR. MOSS: We need to read back what he said.

Let's go get it. Let's go get the record, please.

(Thereupon, the record was read at sidebar as follows:)

"MR. ROSENBLATT: Now, bringing up the chronology on secondhand smoke, in 1982, in a Surgeon General's Report, this statement appeared: That

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epidemiological studies on secondhand smoke and lung cancer raised the concern that secondhand smoke may pose a carcinogenic risk."

THE COURT: I haven't ruled on the Surgeon General's Report, I have not ruled that the Surgeon General's report is excludable. I haven't made that. All I said was that I would like not to get into the content of it, on opening statement. We can research that issue further. So if you are going to make a quote from it, I would agree with them. If you are going to indicate that there was an indication, that was a different story.

MR. ROSENBLATT: I just wanted to make the observation, and I understand the Court's instruction. I don't have a problem with that. I don't think that is a direct quote. Really we shouldn't get into the posture here, either on my opening statement or theirs, that there is magical words, you know, which if you say this, it's, you know, it's okay. Basically, I have understood your ruling. I am not talking about detail.

THE COURT: Okay, "In general, the Surgeon General's Report indicates that---"

MR. ROSENBLATT: Fine.

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MR. HARDY: That's fine.

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THE COURT: Let's stay away from closing argument. I think that a lot of what you are saying is more in closing than in opening.

(Thereupon, the following proceedings were had in the presence of the jury:)

MR. ROSENBLATT: As I was saying, there's an indication in the 1982 Surgeon General's report that epidemiological studies on secondhand smoke and lung cancer raise the concern in the medical community that secondhand smoke may pose a carcinogenic risk to nonsmokers.

Now, taking the chronology a little further to the present, a very significant year with respect to the issue of secondhand smoke was 1986. And in 1986, the Surgeon General's report indicated that secondhand smoke is a cause of disease including lung cancer in healthy nonsmokers. Cause. And in that very same year, 1986, the National Academy of Sciences, a very prestigious organization, reached the same conclusion: That secondhand smoke is a cause of lung cancer in healthy nonsmokers.

And the evidence is going to show that from that day--before then, from that day up until this day, the strategy of the tobacco industry has been

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to knock, ridicule, make fun of the whole issue of secondhand smoke as causing disease.

Now, this was a full-page ad and it's just one of many, many examples. This was a full-page ad taken out by R.J. Reynolds, which, I believe, appeared in the New York Times and USA Today and the Wall Street Journal, and many major newspapers across the United States, and the title of it really says it all: Smoking in Public: Let's Separate Fact From Fiction, the message clearly being that "Secondhand smoke is a lot of malarkey. Don't worry about it. Everything is cool." And it's just not a concern. And what do they say? "There has also been some friction between smokers and nonsmokers, but lately this friction has grown more heated. The controversy has been fueled by questionable reports which claim that secondhand smoke is a cause of serious diseases among nonsmokers." Questionable reports refer to reports from scientists, from doctors, from Surgeon Generals.

And the ad goes to say, "But, in fact, there is little evidence and certainly nothing which proves scientifically that cigarette smoke causes disease in nonsmokers." And that's why, going back to The Frank Statement in 1954, that was the

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strategy with respect to active smoking, and the strategy is now being translated to the debate on secondhand smoke.

Now, this is an ad taken out by the Tobacco Institute. The Tobacco Institute is located in Washington, D.C. and generally serves as the spokesman for the tobacco industry when a Surgeon General's report comes out. When a study comes out,

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when anything negative to the tobacco industry comes out, the general procedure is that the Tobacco Institute, rather than individual companies, will respond, although many times individual companies respond as well.

And basically, it says it all in this headline, and this is one document out of many which support my contention to you that the strategy has been to knock and ridicule and belittle and say secondhand smoke is not a problem to the health of nonsmokers.

After millions of dollars and over 20 years of research, the question about smoking and health is still a question, and that's what I said earlier. 43 years after The Frank Statement, not only is in their minds the issue of secondhand smoke still an open question, the issue of active smoking is still

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an open question, but the evidence will show only to the tobacco industry, not to the general medical and scientific communities, not only in this country, but worldwide.

And this is another blow-up from the Tobacco Institute, and it's obvious from this that here they attempt to mount a preemptive strike in that---

MR. WHITING: Your Honor.

THE COURT: Sustain as to the preemptive strike statement.

MR. ROSENBLATT: It's obvious that they criticize, as they always do, the public health officials of the United States whose mandate is to protect and improve the health of the American people, and the Tobacco Institute says, "The Secretary of Health, Ed Chase, cordially, invites you to a one-sided debate."

And then at the very top it says, "HEW doesn't call it manufacturing the news, so in their memo of September 8, 1977 they call it creating a media event. Regardless of the name it goes by, however, what happens Thursday, January 11, will affect millions of persons." You see, HEW and the Surgeon General are making another pronouncement on smoking and health, and obviously the tobacco

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industry is telling the American public: "Don't believe them. Believe us. Believe big tobacco. Don't believe HEW. Don't believe the Surgeon General," and they go to say, "That's why after you heard what HEW has to say on Thursday, we'd like you to get the rest of the story by calling us at the Tobacco Institute." And historically, there always was another side of the story, tobacco's story, and they had the wherewithal to get that story out through full-page ads such as this.

Now, I've mentioned to you in terms of our witnesses, and as His Honor pointed out, and it's very, very accurate and worth pointing out, it's the summer. This case is going to be tried in July and August. People are on vacations. Experts are on

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vacations. Not you all and not us, but the normal people out there are on vacations, and that's a problem that I'll have with my experts. That's a problem that they will have with their experts, so many times experts are taken out of chronological order so that by an opening statement we are able to give you hopefully in a cohesive, fairly chronological way what we expect the evidence to show, but certainly the witnesses will not be called in perfect chronological order.

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Now, I mentioned to you the two former Surgeon Generals of the United States that we hope to testify live: Julius Richmond and Jesse Steinfeld. Dr. Steinfeld, after he left the office of Surgeon General, became dean of a medical school. He's retired now. Dr. Richmond is still affiliated with the Harvard Medical School, although he, too, is retired.

Now, let me mention three or four other expert witnesses who we are going to call, and we are going to bring you, in basketball terms, we are going to bring you experts, the equivalent of Michael Jordon, Magic Johnson and Larry Bird. We are bringing you super stars. We are bringing you heavy ones.

MR. WHITING: Objection, Your Honor.

THE COURT: Sustain the objection. Let's not characterize the testimony. Leave that for closing, if you would.

MR. ROSENBLATT: The three I'm going to mention now are all connected with prestigious medical schools, and all of these doctors--and we had access to many experts. We had some choice in deciding who would be--

MR. MOSS: Your Honor, the fact that he

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has a choice or not a choice---

THE COURT: Gentlemen, please.

MR. MOSS: I object, Your Honor.

THE COURT: Overrule the objection. Let's leave this in the context of which it's supposed to be which is an opening statement, and refrain from getting into other areas.

MR. ROSENBLATT: All of these experts that I'm talking about now are not ivory tower physicians. They are hands-on physicians who deal with patients, who deal with people in addition to their public health roles and other worlds. These doctors take care of the very sickest people in the intensive care units.

The doctors who I'm going to mention now are invited all over the world to lecture and teach. John Holbrook, who I had mentioned earlier, he is the chief of internal medicine at the University of Utah, School of Medicine. Since the early 1970s, he was an editor of the Surgeon General's reports on the health consequences of smoking. He was invited to write a chapter in a textbook which is considered

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the bible of internal medicine. The name of that textbook is Harrison's Principles of Internal Medicine.

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And you're going to learn in this case, you're going to learn the difference between a textbook that is recognized throughout the medical community as a peer review textbook, and you're going to learn the same thing about medical journals. The difference between the New England Journal of Medicine, for example, on the one hand, and some much lesser regarded medical journals, and that's going to be important to you in terms of evaluating the credibility and the believability of witnesses that both sides present, because, obviously, we are going to present witnesses who are telling you opposite things, and part of your job is going to be to decide, well, who should I believe? Who should I believe? And obviously, what will go into your equation, hopefully, will be the believability; the credibility based on the credentials and experience and life---

MR. WHITING: Your Honor, this is pure argument.

MR. ROSENBLATT: You know, Judge---

THE COURT: Gentlemen, please. Objections are raised. Let me deal with it. Overrule the objection.

MR. ROSENBLATT: Dr. Holbrook has

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written about secondhand smoke in Harrison's Principles of Internal Medicine, and the point I was making before is that, for example, you'll hear about doctors being board certified. Now, that's a completely different thing than when a doctor tells you, "I'm a member, for example, of the American Medical Association," and that's a fine organization, but in order to become a member of the American Medical Association, you don't have to take any special examinations or tests. To become board certified you do, and it's vigorous, so there's a difference between board certified. And in terms of writing a chapter in a prestigious textbook such as Harrison's, you don't do that because the editor likes you or because you have connections. You do it because you are considered to be--you are very highly regarded in your specialty.

Another expert witness we will have is Dr. David Burns from the University of California in San Diego. Dr. Burns is a specialist in internal medicine which includes the heart, the lungs, and also a pulmonologist, and a pulmonologist is a particular specialty within the general field of internal medicine dealing with the lungs.

Dr. Burns is the medical director of

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respiratory therapy at his hospital. He is an

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intensive care physician, and that's the point I was making, that in addition to their work with Surgeon General's reports and in the public health community, these physicians are also hands-on, treating doctors.

Dr. Burns: From 1975 until 1986, he was the scientific editor of the various Surgeon General's reports during that time frame, and he will tell you, as others will, how Surgeon General's reports are compiled, and how they are written, and how they are peer-reviewed, and how they are looked at by specialists in all kinds of areas to ultimately come up with a conclusion.

And the Surgeon General report is obviously not the work of one person but of many. Dr. Burns was on the Scientific Advisory Board of the United States Environmental Protection Agency. It was the Environmental Protection Agency which came out with its report in January 1993, which said that secondhand smoke is a Class 1 carcinogen, meaning a carcinogen which causes cancer in human beings.

Dr. Burns will tell you that the tobacco companies--and he dealt with the tobacco companies as being the scientific editor of the Surgeon

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General's reports--the tobacco companies always misrepresented the status of the scientific knowledge of secondhand smoke. Dr. Burns will tell you that other environmental agents would have been restricted years earlier if the same findings had been made about them as had been made about secondhand smoke.

Now, another one of our experts, Dr. Thomas Petty from the University of Colorado Medical School, is one of the best known pulmonologists in the world. When Begin was Prime Minister of Israel and his wife had emphysema, Dr. Petty was called to go to Israel and treat her. That's the kind of reputation that Dr. Thomas Petty has.

For many years he was the head of Research and Academic Affairs at the University of Colorado School of Medicine. He is board certified in both internal medicine and pulmonary medicine. He is a specialist in chronic obstructive pulmonary disease, asthma, bronchitis, emphysema, and pneumonia. He is a specialist on addiction. He has run addiction clinics, and he will be able to testify to you about whether or not cigarette smoking is addictive. He has been the editor of many prestigious journals. He has been the president of the American College of

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Chest Physicians, a national organization consisting of pulmonary specialists, cardiologists and thoracic surgeons.

Now, we have been talking about the lung in general, and I think most people have a general, basic understanding of what the function of the lungs are, but since it is so basic, let me review very briefly that the main function of the lung is

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obviously to take in oxygen, and the blood circulates and carries oxygen to the tissues, to the cells, to the organs, and that's what allows people to remain alive. The lungs also get rid of the waste gas of metabolism, which is carbon dioxide. It takes in oxygen; gets rid of the waste product which is carbon dioxide.

Now, carbon monoxide is something else, and I mention this simply as but one example of a compound in smoke. It decreases the ability of hemoglobin in the blood to carry oxygen to the tissues. And carbon monoxide is merely one chemical constituent out of thousands in tobacco smoke which impacts the lungs, the heart, and the respiratory system.

And then we will bring you Dr. William Cahan, that name is spelled C-A-H-A-N, who basically

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spent about a half a century, 50 years, in active practice at Sloan-Kettering in New York City, and this is a man, from firsthand observation, he knows what normal lungs look like; he knows what diseased lungs look like; and he knows the enormous difference between the two. He has opened up hundreds and hundreds, if not thousands of chests to remove cancers caused by tobacco.

And what these experts, Petty, Holbrook, Burns, Cahan, and there will be others, when these experts and others tell you that secondhand smoke causes lung cancer, respiratory problems and heart disease, they do not base their opinions on this or that particular epidemiological study; they will base their opinions on a lifetime of hands-on medical practice, reading, teaching, studying, keeping current, talking and interacting with respected colleagues all over the world.

And just another thing to put in a chronology: In 1981, on secondhand smoke, two major studies from Japan and Grease showed more lung cancer among the wives--the wives themselves were nonsmokers, but they were married to smokers, and these two studies done in different countries by different researchers involving different people

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reached the same conclusion: That if a wife, who is a nonsmoker, has a husband who is a smoker, just because of that one-to-one relationship, her chances of developing lung cancer would be significantly greater as a direct result of her exposure to secondhand smoke.

I had mentioned before the United States Environmental Protection Agency which came out with their report in January of 1993, and it was called Respiratory Health Effects of Passive Smoking: Lung Cancer and Other Disorders," and one of their conclusions of the--it's the United States agency, the Environmental Protection Agency of the United States. One of their conclusions was that in adults, secondhand smoke is a human lung carcinogen

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responsible for 3,000 lung cancer deaths annually in American nonsmokers. In American nonsmokers.

The EPA report estimated that 150,000 to 300,000 cases of pneumonia and bronchitis---

MR. MOSS: Your Honor, I don't think we need to get back up there and argue about it.

THE COURT: Without getting into specifics of the report. Just generally.

MR. ROSENBLATT: In addition to the general conclusion reached by the Environmental

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Protection Agency that secondhand smoke is a Group A carcinogen and it causes about 3,000 lung cancer deaths among nonsmokers, they reached other conclusions with respect to children, with respect to babies, and other diseases.

And the tobacco companies' response to the report of the Environmental Protection Agency was to sue them and to bring them into court and ask that the report be withdrawn, and that litigation between the tobacco industry and the Environmental Protection Agency, according to my understanding, is still pending.

But the tobacco industry, when--the evidence will show and the documents will show that part of the strategy of the tobacco industry, when things come out that they don't like, they sue and pressure people; they take them to court, and they will take on the government and they sued the Food and Drug Administration, the Federal Trade Commission---

MR. MOSS: Your Honor, this is certainly not opening statement.

THE COURT: Yes. Sustained. Save it for the end.

MR. ROSENBLATT: There were 18 independent experts on the Environmental Protection

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Agency's Scientific Advisory Board which unanimously endorsed the conclusions of the EPA.

And very fundamentally, what the evidence will show, the witnesses, the documents, the facts, is that what I talked about earlier, this so-called false controversy. The reality is that on this side of the ledger is legitimate science, medical doctors not only in the United States but essentially worldwide, and on the other side saying, "Hey, it hasn't been proven. Hey, there's a debate. Hey, there is still open questions," by the tobacco industry and its allies, and its allies are, in many cases, so-called experts who have received money from the tobacco industry over the years.

I'm ready to get to another topic. We have been going for a while. Whatever your pleasure is, Judge.

THE COURT: Do you want a break? Okay. Let's take a short break. Do not discuss this case, do not reach any conclusions. Just go inside, folks, and relax. Leave your pad on the seat, the cover sheet on top. We will be in short recess.

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(Thereupon, a short recess was taken.)
(Thereupon, the following proceedings were held outside the presence of the jury:)
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THE COURT: Have a seat, please. In the future, if there's a recess, please, let's get the jury out of the room before you folks stand on your feet and leave or start talking. I just as soon get the jury out first, then you folks can leave. All right. Bring them in.
MR. ROSENBLATT: Judge, your bailiff said about 12:30?
THE COURT: Whatever. Yes.
(Thereupon, the following proceedings were held in the presence of the juror:)
THE COURT: Have a seat. Thank you. I know the facilities in there are not the greatest. There is much more of you than normal, so, I do know your problems. We are trying to keep a time schedule if we can. We'll probably break for lunch somewhere between 12:30 and 1:00, just in case most of you were worried about it.
Okay, sir, go ahead.
MR. ROSENBLATT: Thank you, Judge.
Okay. Ladies and gentlemen, the next area that I'm going to talk about, and I think it's a very significant area, is the deposition testimony which I've taken of the CEOs of Philip Morris, R.J. Reynolds, Lorillard, Brown & Williamson, and
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Liggett.
Now, interestingly enough, Judge Kaye allowed me, way back in 1993, to take the depositions of all the CEOs, and we went to New York and we accomplished that. We took their depositions. And then for a variety of reasons, this case, although, a lot of lawyers did a lot of hard work, it dragged for a number of reasons. There were various processes that we had to go through, and all of a sudden it was 1997 and all the CEOs whose depositions I had taken in 1993 were no longer with the companies. There were new CEOs.
So Judge Kaye gave us permission to take the depositions of the new CEOs, and the evidence will show that whether you look at the old CEOs, 1993, or the new CEOs, 1997, they were amazingly consistent. Basically, they repeated, the evidence will show, they repeated the same lies that they have been repeating since the '50s and '60s and '70s and '80s, and the fact that it was the 1990s, it was still the same.
They all took the position in 1993 and 1997 that it has not been scientifically proven that cigarette smoking causes cancer. And I said, when I asked them about the warnings, "Hey, the Surgeon
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General says cigarettes cause cancer. Are you

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telling me that's not true?" And they basically all said, "No. We just have to have that on. The government makes us put those warnings on our packages of cigarettes, but, no, it's really not accurate. It's really not accurate. It's just a risk factor like hundreds of other things in the environment are risk factors."

Although the Centers for Disease Control, which is a federal agency centered in Atlanta, Georgia, estimates that cigarette smoking kills approximately 435,000 persons every year--that's a government estimate by a public health agency--the CEOs in 1993 and 1997 take the position that they will not admit that cigarette smoking has ever killed a single individual. That's their position.

They say it's not addictive. Not addictive. All it is is a matter of willpower.

MR. FAYE: Objection, Your Honor.

THE COURT: Overruled.

MR. ROSENBLATT: They all say, "Make up your mind. Make a commitment to quit, and you can quit."

You'll hear from Dr. Tom Petty, who runs addiction clinics, and he will tell you about people

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with chronic obstructive pulmonary disease, who are dying and they are smokers, and they can't quit.

Doctors will tell you about---

MR. FAYE: Your Honor, this just isn't true as to Liggett.

MR. ROSENBLATT: Pardon me?

THE COURT: He is making an objection on the basis of Liggett.

MR. ROSENBLATT: I'm going to get to Liggett.

THE COURT: Okay.

MR. ROSENBLATT: Liggett is different.

And a lot of the CEOs don't smoke anymore. They all quit cold turkey, whether they smoked for ten years or 25 years. They made up their minds; they all quit.

And secondhand smoke, of course, is a big joke to them; it doesn't cause anything. And I asked them a lot of questions about, "Well, you know, in the new advertising in recent years, lower in tar, lower in tar," and I say, "Well, aren't you trying to say to the American public that the cigarettes that are lower in tar are somehow not as dangerous to a person's health?" And they all said, "No. Low tar has nothing to do with health. It's

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just a marketing device."

And then they all basically said--I asked them to assume hypothetically, "Well, I know you don't believe that cigarette smoking causes cancer and that it kills your fellow Americans, but let's just say that it were true, would you get out of the business? Would you stop selling cigarettes?" They all said, "No. Just keep on selling." That speaks

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volumes. That, ladies and gentlemen, speaks volumes.

All the 1993 CEOs appeared in front of Congress in April of 1994, raised their hands, swore to tell the truth, and we believe the evidence will show, told the same lies.

Now, Liggett is an exception. Bennett LeBow, who is the--he's the owner of Liggett and has a CEO, you know, running it for him, but I took his deposition in 1993, and back in 1993 his testimony was consistent with the other CEOs, which I've just described to you. However, Bennett LeBow's position has changed, and I'll let his lawyer and I'll let him, because I intend to call Mr. LeBow as a witness in this case, come before you and he will have an opportunity to explain, but it is a fact that he, unlike all the other CEOs from all the other

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companies, Philip Morris, R.J. Reynolds, Lorillard and Brown & Williamson, his position is now, "Hey, I was wrong in 1993. Cigarette smoking does, does cause cancer. Nicotine is addictive." But all the other companies are hewing to the same line.

You know, when we speak of secondhand smoke, mainstream smoke, coming out of the person's mouth; sidestream smoke, the smoke that comes off the lit cigarette that a person is just holding, it sounds awfully antiseptic. The evidence will show that secondhand smoke is obviously a waste product from one person that a nonsmoker, in a situation where they have no choice, is involuntarily breathing in the waste product of another person. Common sense would tell anyone the evidence will show that can't be good for your health.

Now, let's talk about the airlines a little. As the tobacco companies lied to the American public, they lied to the airlines. They lied to flight attendants, and the airlines had an economic reason for wanting to believe the lies because they had a lot of customers who smoked and wanted to smoke, and they would have lost customers if they didn't smoke during the '60s, '70s and '80s. A large number of airline passengers smoked. Flying

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is very stressful to many people, and smokers will tend to smoke more than normal on a flight. I don't think there's any question about that.

We will show you from the testimony of pilots and mechanics and from photographs what secondhand smoke does to metal and instruments within the airline cabins, and then our expert witnesses will translate, "Well, if it's doing that to metal and instruments, imagine what it's doing to tissues and organs in the human body."

There is a special concentration of secondhand smoke in an enclosed chamber where you can't open windows; there is no fresh air; there is no natural ventilation; the air is re-circulated. The evidence will show that flight attendants have

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infinitely greater exposure in an airplane with a couple of hundred passengers than a spouse faced with one smoker.

Now, the tobacco companies, the evidence will show from documents and from witnesses, they had their own research in addition to all the outside research, and they knew that secondhand smoke was harmful to the health of nonsmokers, and they knew that secondhand smoke caused disease in nonsmokers, and they hid and they distorted and they

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lied about this information. The airlines were in no position to conduct their own research, and besides which, the airlines had to deal with the Civic Aeronautics Board, the Federal Aviation Agency.

The plaintiffs, the class members in this national class action, however many thousand there are, the class members in this class action are totally innocent. They made a choice not to smoke and they didn't smoke, and they didn't know that secondhand smoke could cause them to develop lung cancer and other serious diseases.

Smoking was banned on domestic flights in 1990. In the late '80s, there were some bans that were put into effect. Let's say, if a flight was more than two hours, there was a ban, but in 1990, in terms of going from Miami to New York or traveling anywhere within the United States, smoking became banned, and I just tell you that as a matter of historical record.

As I've said earlier, it is the position of the plaintiffs that the diseases that are caused by smoking are also caused by secondhand smoke, but realistically speaking, our focus in this case, our focus before you will be on the main diseases of

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lung cancer, respiratory problems, and heart disease. And that's going to be our main focus. Other diseases will come up and they will be discussed and questions will be asked, cross examination, direct examination, but in terms of keeping our eye on the target and what our focus is, it's lung cancer, respiratory problems, other lung problems, and heart disease. And although the strategy of the tobacco companies has been and will be in litigation to complicate matters, to create a complexity where none really exists, we believe the evidence will show that the issue of cause is essentially a common sense issue. We are going to have very high-powered medical testimony from highly qualified people, but at bottom, the question of cause is a common sense determination.

If a flight attendant who is a nonsmoker never worked in uranium mines, never worked in the asbestos industry, and has developed lung cancer after years of exposure to secondhand smoke in airline cabins, common sense as well as the medical testimony will tell you you don't have to look for a

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hidden obscure cause. The cause obviously is the long-time exposure to secondhand smoke.

You'll hear concepts, and these will come

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from the defendants on cross examination--and I'm sure tomorrow when they go into their opening statements, you'll hear things like confounding factors; you'll hear things such as meta-analysis in terms of their overall strategy to pick apart the epidemiology and the conclusions of the Surgeon Generals, the National Academy of Sciences, and the Environmental Protection Agency.

You may also hear the concept of tobacco is a legal product. Without question; that's true. Tobacco is a legal product. They can't be punished for manufacturing it and selling it. They are allowed to do that, but that in no way changes the basic elements of this case. Chevrolet is a legal product, but if that's made defectively or if the fuel tank catches on fire---

MR. HARDY: Your Honor, this is pure argument. Objection.

THE COURT: Sustained.

MR. ROSENBLATT: By virtue of something being a legal product, as the Court will instruct you at the conclusion of the case, that does not get a manufacturer off the hook by simply saying it is a legal product.

Now, we will bring in evidence to show that

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smoking has been banned throughout the United States. Not in every single building. In all the Defense Department facilities smoking is banned; the Postmaster General in June of 1993 banned it in over 40,000 postal facilities; states, cities, counties, private buildings have banned it. And the reason is very simple. They are not looking to hassle smokers. They have essentially become persuaded that the Surgeon General, the Environmental Protection Agency, the National Academy of Sciences is correct.

MR. MOSS: Your Honor, you know---

THE COURT: Really, counsel. I'll sustain the objection. I wish you would just stick strictly to what the witnesses are going to say or the documents are going to say or the evidence. I can't help it if it's just a little more expansive in your mind. You have to follow the rule.

MR. ROSENBLATT: We are going to have witnesses who are going to tell you the reason why this building and the defense buildings and the post office buildings ban smoking, and they are going to tell you that the reason is because they know and they accept---

MR. MOSS: Your Honor, you just ruled

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on it. Other witnesses don't come in here and tell

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why other people say---
THE COURT: If that's what the witness is going to say, then that's what they will say.
MR. ROSENBLATT: That's what they will say.
THE COURT: All right. Overruled.
MR. ROSENBLATT: Sometimes objections are tactical. I want you to understand that.
MR. HARDY: Objection, Your Honor.
THE COURT: That's a prime example of one.
MR. ROSENBLATT: Yeah.
THE COURT: All right.
MR. HARDY: Very tactical.
THE COURT: Let's not--no comments.
MR. ROSENBLATT: One thing I'll guarantee, I won't interrupt them as much tomorrow.
MR. MOSS: He doesn't instruct the jury.
THE COURT: Gentlemen, please.
MR. ROSENBLATT: You're on a roll, guys. You're on a roll.
THE COURT: I said, counsel---
MR. ROSENBLATT: Sorry, Your Honor.

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THE COURT: One more time, you'll deal with me personally.
MR. ROSENBLATT: Sorry, Your Honor.
See, I'm deleting stuff. They are intimidating me.
THE COURT: Just do what you have to do.
MR. ROSENBLATT: Okay.
And here is something else. Here is something else I'm going to be very straight about. Will the evidence show that there's a epidemiological study that is not perfect? That's true. Absolutely. Absolutely. The evidence will show that if you want to pick apart and you want to nitpick and you want to cross examine the research, not every study is perfect, but the evidence will show, from the standpoint of big picture, common sense, reality, that the conclusion that secondhand smoke causes lung cancer and other diseases is true, and that's why everybody, basically everybody, in the medical and scientific communities are on one side and the tobacco industry is on the other side.
And in terms of some of these documents, we are going to show you a document during the trial--and many of these, I made a judgment that

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rather than inundate you with blow-ups and documents during the course of opening statement, I think it will make more sense that as we call witnesses, introduce a couple at a time rather than to have a tremendous number of these blow-ups and documents brought in front of you.
But one of the documents will be a document going back to July 17, 1963. Ladies and gentlemen,

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that's 34 years ago. And this is a statement made by a very high official in Brown & Williamson and who is a very high official for the Council for Tobacco Research who said very clearly 34 years ago, "Nicotine is addictive. We are in the business of selling nicotine, an addictive drug." And for 34 years, the tobacco industry has hidden that and pretended that it wasn't true; that nicotine was not addictive.

And we will have many exhibits of the Madison Avenue attacks on secondhand smoke, whether it was a Surgeon General's report or the Environmental Protection Agency, sometimes in the Wall Street Journal or the New York Times or USA Today. Many are major. There will be two full pages, and the whole purpose of it was to create doubt about the validity of the conclusions reached

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in the report of the United States Environmental Protection Agency.

We'll have documents which will show you that there was a global strategy of Philip Morris to get favorable scientists who would become friends of the tobacco industry to kind of go along with their skepticism and their debunking the scientific findings relating to secondhand smoke.

The tobacco companies had a duty to tell the truth about what they knew concerning secondhand smoke. They had a duty not to lie, not to commit fraud, and not to misrepresent. They made those choices. They could have been straight with the American people. They could have been honest with the American people, but they made the choices not to be.

MR. WHITING: Your Honor, this is argument.

THE COURT: I agree. Counsel, I don't want to have to say it again. This is not opening statement. This is closing argument that you're giving. I want an opening statement.

MR. ROSENBLATT: Your Honor, you know, until today---

THE COURT: Your impressions and your

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statements and your understanding is not the subject matter of an opening statement. Okay?

MR. ROSENBLATT: Since this was not made clear to us until today, I would like to take a break now, and during the lunch recess I'll go over some of this stuff because there is going to be a constant thing here with them, and unfortunately, some of the comments you made are an invitation.

THE COURT: I think you are an experienced attorney to know the difference between an opening and a closing.

MR. ROSENBLATT: What I'm doing now in a punitive damage case is opening.

THE COURT: Enough. Enough. We'll take a recess. Come back at 1:30. That's one hour.

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1:30. I want you folks to go anywhere you wish to for lunch. Just relax, folks.

Please, you're still in a court of law.

I want you folks to go anywhere you want to for lunch and be with anybody you want to for lunch. Talk about anything in the world except this case. I don't want you to even think about discussing anything about this case even among yourselves. Even if you talk to yourself about it, I don't want you to do that. Just go out and enjoy your lunch

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and come back here. Meet the bailiff outside the courtroom door--come back on the second floor. There's the jury room back there. You'll be better off down there, the jury room on the second floor, and the bailiff will meet you down there at 1:30. All right.

(Thereupon, a lunch recess was taken.)

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AFTERNOON SESSION

(Thereupon, at 1:40 p.m. the following proceedings were held outside the hearing of the jury:)

THE COURT: Folks, we had some sort of a problem over the lunch hour, I guess. When we all leave this room and go out into the vestibule, everybody has a tendency to talk. There are a lot of people here.

Unfortunately, there was a trial going on in the other courtroom. The judge was addressing the jury and could not be heard because of the noise and the din out in the vestibule. So, I'm going to ask you to please cooperate and keep your voices down, realizing that there are courts in session other than this one. It would make our lives that much better because it's very difficult when there is so much noise out there, and these halls reverberate with sound. I will ask your cooperation on that.

Also, I would like you not to get up and leave the room until the jury has gone out this way and we get them on an elevator and downstairs. That

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may mean that you may have to sit here for a couple of minutes while we get that accomplished. As it is, everybody rushed out and unfortunately there was

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a conflict with the jurors not being able to get to--- So, we will follow that rule throughout.

All right. Are you ready to proceed, sir?

MR. ROSENBLATT: Yes, Judge.

THE COURT: Let's bring the jury in.

(Thereupon, the jury entered the courtroom.)

THE COURT: Please be seated, folks. Thank you.

All right. If not a wonderful lunch, I hope it was at least adequate.

All right. Are we ready to proceed, everybody?

Yes, sir. Go ahead.

MR. ROSENBLATT: Yes, Your Honor.

Good afternoon.

You are going to hear a lot in this case -- I don't know how much -- about something called the Center for Indoor Air Research. Now, a lot of times when we hear about governmental agencies, like the Environmental Protection Agency or some of the other -- the Centers for Disease Control, so there will be no confusion, the Center for Indoor Air Research, we believe the evidence will show, is an organization set up with respect to secondhand smoke and to serve essentially the same purpose that the Council for

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Tobacco Research has served over the years with respect to both active smoking and secondhand smoke.

Basically, the evidence will show that the tobacco-created Center for Indoor Air Research was essentially a mechanism used to fight the bans that people were talking about, whether in government or in private buildings. It was they who tried to come up with research and argue the other side of the coin, that there was no necessity for smoking to be banned in buildings or elsewhere.

The evidence is going to show in this case that not only nonsmokers were essentially conned by the tobacco industry, but that smokers were as well. Smokers for many, many years did not believe--- This was part of the overall strategy so that smokers would not believe that their habit could cause harm to the nonsmoking members of their family because obviously a smoker who loves his family, if he felt or she felt that that habit could harm a member of the family at whatever age, this is something that might have an impact on their decision to quit smoking.

Now, if you go back to the voir dire process, when the judge and the lawyers questioned you individually to try to figure out your

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qualifications if you were going to serve on this

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jury, many, many times the issue came up of the burden of proof. Now, the plaintiff has the burden of proof, but in a civil case many times the illustration was used the greater weight of the evidence. In other words, if we tilt the scale, we have prevailed. We have met our burden of proof.

We are very confident that the evidence, the testimony, the documents in this case are going to do a heck of a lot more than just tilt it, but legally that is our burden.

MR. MOSS: Your Honor, I do hate to object, but counsel knows the Court will instruct the jury on the burden of proof and all other matters.

THE COURT: Insofar as he's gone at this stage, overruled. I don't think he's going to get into any more depth.

MR. ROSENBLATT: I'm not.

THE COURT: Overruled.

MR. ROSENBLATT: We are going to have several statisticians come before you. A statistician is a--- One that I have in mind, Dr. Bookstein from the University of Michigan, is a Ph.D. in statistics and some other field.

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Basically, what he's going to say is that the strategy of the tobacco companies to knock and ridicule and belittle the studies, the epidemiology of the Environmental Protection Agency and other agencies, he will say this is game playing. It's semantics. It's mind games. It's number games. He will bring you back to the validity of the general conclusion reached by the Surgeon General, the National Academy of Sciences and the Environmental Protection Agency that secondhand smoke does, in fact, cause disease.

In addition, we will have experts who are spokesmen for the American Medical Association, the American Heart Association, all the major public health agencies, to explain to you what they know and what the scientific and medical communities say about the dangers of secondhand smoke, and we will have chemists testifying about the enormous amount of smoke which actually exists in airline cabins without fresh air in a recirculated air situation and how much exposure flight attendants have to it.

Dr. David Burns, whom I mentioned earlier, and other witnesses will testify that smoking would have been banned on domestic airline flights many years earlier if not for the interference and

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untruths told by the tobacco industry over the years. Dr. Burns will testify that, had secondhand smoke been treated as any other environmental agent, which did not have the power and the wherewithal of the tobacco industry to constantly fight it, that it would have been banned years earlier.

You will hear from a former Philip Morris scientist--- This is but one example of many. You

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will hear from a former Philip Morris scientist who was told to destroy test results that he obtained doing research for Philip Morris, in-house research, showing how incredibly toxic and poisonous Virginia Slims were in tests to measure components of secondhand tobacco smoke. In this context, you are going to hear the word "nitrosamines," which are very carcinogenic. It will show a pattern of how not only Philip Morris but all the tobacco companies tried to hide and bury and distort all the information that was unfavorable to their business interests.

Now, another thing I want to make clear, many, many times--- You will remember, again, during the selection process the Judge made the point about opinions that maybe you had about smoking, about tobacco, about the tobacco industry,

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things like that, and whether you could leave those opinions aside. Now, obviously I want you to understand that the system, in order to work, recognizes and understands that people bring their common sense. They bring their common lifetime experiences because from our standpoint, whether or not the tobacco industry fooled and lied to the American people, people have to look at their experiences in their lifetimes and their common sense in making those kinds of judgments.

Now, in terms of the science, we may never fully understand, and we certainly don't fully understand today, the precise mechanism that causes a good cell to go bad, to become a cancer cell. This is 1997. There are certain things science does not yet understand, the precise mechanism of why one person exposed to a carcinogen will develop cancer and why another person will not develop cancer. But in a sense, in terms of the mandate of public health officials, they will explain to you, these various public health officials, "We can't sit around and twiddle our thumbs waiting for every answer to every hypothetical question. What we do know is that smoking and secondhand smoke causes cancer, and we have got to get rid of it." So, that's why public

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health officials act, and the fact that not every answer has been provided, the fact that cancer is a complicated disease, the fact that tragically we have not yet found a cure for cancer in no way changes the basic elements in this case.

Why does Congress get involved? Why does Congress and the White House ask for the Surgeon General's report every year to be delivered to the Congress of the United States and to be delivered to the White House? I think you will hear from all the public health officials that the health of citizens and particularly in a democracy is and should be a deep concern to any decent government.

You are going to hear in this case -- every now and then the phrase will be mentioned about

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someone having an agenda, an agenda, which somehow creates an aura of suspicion. Without question, most public health officials do have an agenda, and that agenda is to do everything within their power to protect the health of the American people. It's hardly an agenda to be ashamed of.

I'm almost getting to the end of my notes. I thought I had a lot more.

The evidence, ladies and gentlemen, in this case will warrant and justify and require the

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imposition of punitive damages to achieve justice. Now, again, during the jury selection process, I asked every single juror a question about punitive damages, contrasting it somewhat with compensatory damages. I described punitive damages as what is known under the law essentially as punishment damages.

MR. MOSS: Your Honor, again, we all know the rules. This is an opening statement, Your Honor. It's not the time to argue the case.

THE COURT: I agree with you. This is not the time to argue the case.

MR. ROSENBLATT: I am explaining why the evidence is going to justify punitive damages.

THE COURT: Why don't you explain the evidence.

MR. MOSS: Thank you, Judge.

MR. ROSENBLATT: Knowing what the evidence was in this case led me in terms of my question to you that the evidence will justify the imposition of punitive damages, which is to send a message to the community at large that a certain kind of conduct---

MR. MOSS: Your Honor---

THE COURT: I sustain the objection.

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Save it for closing.

MR. ROSENBLATT: The evidence in this case, the testimony in this case, the documents in this case will show evidence of lies, fraud, cheating, deception, which will warrant the imposition of punitive damages. The evidence in this case will show, and we will tilt the scales massively, that secondhand smoke causes disease.

We will ask you in very clear and unmistakable terms, based on the evidence you hear in this case, based on the documents you see in this case, to return a verdict for punitive damages and to say to these defendants that their conduct has been unethical and intolerable, and we won't stand for it anymore, and it's over.

MR. MOSS: Judge, I'm making an objection. Counsel ought to know to refrain, but I guess not.

THE COURT: Let me just state this. We have gone over this on the voir dire. It's the same basic language that was used on voir dire. There's nothing new to it. So, let's leave it there and

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drop it and move on to something else.
MR. ROSENBLATT: I don't have to move on to anything else. I would just like to be shown
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the courtesy by them of finishing, which I'm about to do.
THE COURT: Go ahead and finish.
MR. ROSENBLATT: We are going to ask you, based on the evidence of fraud, lying and deceit, the documents in this case, we are going to remind you that you are representing the conscience of America in this national class action.
MR. MOSS: Your Honor---
THE COURT: I agree. Counsel is getting into closing argument. I didn't want you to do that. I sustain the objection. Let's move on.
MR. ROSENBLATT: And we will ask you to conclude -- through your verdict of punitive damages, we will ask you to tell the tobacco companies of the United States---
MR. MOSS: Your Honor---
THE COURT: Counsel, please, just try to understand my ruling. I sustained the objection. Change the subject.
MR. ROSENBLATT: I'm ending.
THE COURT: Well, if you are ending, end.
MR. ROSENBLATT: I would like to end on a high note.
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The high note is this. Secondhand smoke causes disease. Lying, deceit and fraud justifies punitive damages. It's over. It's over. We are not going to stand for it anymore. That's what this class of flight attendants wants you to conclude in your verdict and tell the American tobacco companies the game is over.
MR. MOSS: Your Honor---
MR. ROSENBLATT: All right. From beginning to end.
THE COURT: Enough said.
I need a side bar.
(Thereupon, counsel and the court reporter approached the bench, and the following proceedings were held outside the hearing of the jury:)
MR. ROSENBLATT: Judge---
THE COURT: I don't want to hear about it. I really don't.
We finished at 2:00. Do you want to start?
MR. HARDY: Excuse me, Your Honor?
THE COURT: Do you want to start?
MR. HARDY: Does the defense want to start?
THE COURT: Yes.
MR. HARDY: No, Your Honor. We
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understood---

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THE COURT: Well, things change, you know.

MR. HARDY: It will take me half an hour to get my exhibits over here. We can't finish today.

THE COURT: I don't want to waste time.

MR. HARDY: I don't like to waste time either.

THE COURT: I'll tell you what's going to happen. You are not going to take a full day tomorrow. That's for sure.

MR. HARDY: No. If we start at nine, we may be through about this same time.

THE COURT: So, we are going to have to have some witnesses ready.

MR. ROSENBLATT: I can have the video.

THE COURT: The video is going to take six hours.

MR. ROSENBLATT: No. I haven't seen Walt Cofer's objections. We are going to have some.

THE COURT: The usual procedure is, you give your opening, and you give your opening, and we get going. I thought I was very liberal in giving you as much time as I did. It's not as much as you

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requested.

MR. ROSENBLATT: You were very liberal. Unfortunately, from my standpoint, they succeeded in gutting my opening statement. Over the lunch recess---

THE COURT: You succeeded in doing that on your own. The reason for that is that you didn't follow the rules imposed on making opening statements. It's that simple.

MR. ROSENBLATT: I didn't know the rules until this morning.

THE COURT: I hope you folks don't take the idea that because it's something he did, it's something you can do because you can't.

MR. ROSENBLATT: I'm not the guy who asked for a separate day for opening statement. They did.

MR. HARDY: Wait a minute. That was just a matter of agreement.

MR. ROSENBLATT: I understand that. I agreed, but you brought it up, not me.

THE COURT: I don't like the idea of recessing at this point. I will recess in deference to the fact that we had agreed to do it tomorrow, but we are going to do something tomorrow and use

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the whole day, okay?

MR. HARDY: Yes, Your Honor.

THE COURT: All right.

(Thereupon, the following proceedings were held within the hearing of the jury:)

THE COURT: Folks, because of the scheduling problems that face us and things of this nature, which we had not anticipated up to this

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point, I'm going to recess this session for this afternoon and pick it up again tomorrow. We moved along a little faster than I thought we would. We ran into some problems we didn't anticipate.

So, please do not discuss this case with anybody, and especially when you go home tonight and your folks ask you what happened down at the courthouse, and you will tell them -- I'm sure you will -- but you can't discuss it. They will look at you and say, "Well, who's to know," because I won't be there, and nobody else will be there. I want you to tell them that you will know. You are under an obligation and a duty as jurors not do discuss this case with anybody for any reason whatsoever in any manner, shape or form.

Also, I don't want you to watch television that may touch upon this case or any other similar

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act regarding the tobacco industry. I don't want you to read anything in the newspaper, magazines, periodicals or any other source. It's absolutely essential that you be insulated from any outside source of information regarding this case or any similar subject matter. I hope we all understand that. This is not a game. We are not here just biding some time. It's important. I want you to follow those rules and regulations.

You will come back tomorrow at 9:00. You will meet on the second floor in the jury room. You will wait for our call. We should get to you very shortly after 9:00. We will take the usual breaks for lunch and other rest breaks that we will need.

It's important and imperative that you be here on time. So, whatever travel arrangements you have to make, think about it now. 9:00 is not too early. 9:00 shouldn't be any problem for you. If you have to be here earlier and wait for us, I would much prefer that you do that than me hanging around waiting for you because I won't know where you are. So, please abide by these rules and regulations, and then we will get along just fine.

All right, folks. Thank you very much. Do not reach any conclusions or decisions about this

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case in any way. Just leave your clipboards on your seats with your cover sheet on top.

Thank you, folks.

(Thereupon, the jury exited the courtroom.)

THE COURT: All right, folks. Give them a chance to get out of the way before we go out. I don't want somebody to start talking in the hallway and say something that they shouldn't say and inadvertently get overheard by a juror. So, give them a few minutes before you go outside.

We will reconvene tomorrow morning at 9:00, unless you folks have something else you want to discuss prior to that time.

MR. ROSENBLATT: Let me mention something that you said.

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(Discussion off the record)

MS. ROSENBLATT: We may need to go through the objections to the CEO's deposition. We are going to try our best as soon as we get back to the office to get the witness here a day earlier to be able to start immediately.

THE COURT: I will be here any time between--- Let's see. You won't know until this afternoon, will you?

MR. ROSENBLATT: What I was mentioning

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to Susan is what you said about the opening statements tomorrow. If they finish theirs by 2:30, you don't want to break at 2:30. You want to do something.

THE COURT: Yes. We can go over those objections if you wish.

All right. We will be in recess until tomorrow at 9:00.

(Thereupon, at 2:05 p.m. court was adjourned.)

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